

OPEN MEETING ITEM

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



ARIZONA CORPORATION COMMISSION

DATE: JUNE 27, 2007
DOCKET NO: W-02109A-06-0751 and W-20496A-06-0751

TO ALL PARTIES:

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

SIGNAL PEAK WATER COMPANY, INC.
(SALE AND TRANSFER OF CC&N)

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:

JULY 6, 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:

JULY 24, 2007 AND JULY 25, 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 Directors's Office at (602) 542-3931.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF
SIGNAL PEAK WATER COMPANY, INC. FOR
APPROVAL OF THE SALE OF ITS ASSETS
AND TRANSFER OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
AVM-2005, L.L.C.

DOCKET NO. W-02109A-06-0751
DOCKET NO. W-20496A-06-0751
DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: May 22, 2007
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. John Paul Jones, Bueler Jones, L.L.P. on behalf of Signal Peak Water Company, Inc;
Mr. Michael Sillyman, and Ms. Susan E. Klemmer, Kutak Rock, L.L.P. on behalf of AVM-2005, L.L.C;
Mr. Robert Geake, Vice President and General Counsel on behalf of Intervenor, Arizona Water Company; and
Mr. Kevin Torrey, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On November 30, 2006, Signal Peak Water Company, Inc. ("SPWC") and AVM-2005, L.L.C. ("AVM") filed with the Arizona Corporation Commission ("Commission") an application for approval of the sale of SPWC's assets and transfer of SPWC's Certificate of Convenience and Necessity ("Certificate") to AVM.

On January 4, 2007, the Commission's Utilities Division ("Staff") issued a letter of insufficiency which stated that the application had not met the sufficiency requirements of A.A.C. R14-2-411(C).

1 On March 30, 2007, Staff issued a notice of sufficiency which stated that the application had
2 met the sufficiency requirements of A.A.C. R14-2-411(C).

3 On March 30, 2007, Arizona Water Company ("AWC") filed a request to intervene in the
4 proceeding. There were no objections to AWC's request.

5 On April 3, 2007, by Procedural Order, a hearing was scheduled for May 24, 1007.

6 On April 10, 2007, Staff requested that the proceeding be rescheduled due to scheduling
7 conflicts.

8 On April 13, 2007, by Procedural Order, the Commission rescheduled the proceeding to May
9 22, 2007, and granted AWC intervention.

10 On April 20, 2007, pursuant to the terms of the Revised Procedural Order, SPWC provided
11 public notice of the proceeding.

12 On May 4, 2007, Staff filed its Staff Report recommending approval of the application.

13 On May 22, 2007, a full public hearing was convened before a duly authorized Administrative
14 Law Judge of the Commission at its offices in Phoenix, Arizona. SPWC, AVM, AWC, and Staff
15 appeared with counsel. At the conclusion of the hearing, the matter was taken under advisement
16 pending submission of a Recommended Opinion and Order to the Commission.

17 * * * * *

18 Having considered the entire record herein and being fully advised in the premises, the
19 Commission finds, concludes, and ordered that:

20 **FINDINGS OF FACT**

21 1. Pursuant to the authority granted by the Commission in Decision No. 40704 (June 22,
22 1970) SPWC provides public water utility service to approximately 35 residential customers with
23 5/8" x 3/4" meters in an area approximately five miles northeast of Casa Grande, Pinal County,
24 Arizona.

25 2. On November 30, 2006, SPWC and AVM filed with the Commission an application
26 requesting the Commission's approval for the sale of SPWC's assets and transfer of its Certificate to
27 AVM which is paying \$300,000 for the assets of the utility.

28 3. SPWC is an Arizona corporation in good standing with the Commission. It is owned

1 by Mr. Douglas Adcox, a real estate developer and homebuilder who built some of the homes in
2 SPWC's service area, and also worked as the utility's certified operator.

3 4. SPWC is classified as consecutive water system because SPWC lacks its own water
4 production facilities and supplies its customers with water purchased from AWC's Casa Grande
5 system, a neighboring water utility, under the terms of AWC's Temporary Service tariff.¹

6 5. AWC provides water to SPWC by means of a two-inch master meter which is
7 connected to SPWC's distribution system. The distribution system consists of approximately 3,000
8 feet of six inch main.

9 6. SPWC's 35 customers are all located on one street and are part of what was platted as
10 a 36 lot subdivision.

11 7. As required by the Commission's Procedural Order, SPWC provided public notice of
12 the hearing on the sale of assets and transfer of its Certificate to AVM.

13 8. Any obligations due for refunds and/or deposits from SPWC's existing customers will
14 be assumed by AVM.

15 9. AVM will charge the rates and charges previously authorized for SPWC by the
16 Commission in Decision No. 56670 (October 25, 1989).

17 10. According to Mr. Adcox, a Pinal county franchise was issued to SPWC to operate its
18 system in county right of ways by the Pinal County Board of Supervisors. Upon the Commission's
19 approval of the sale of SPWC's assets to AVM, AVM will apply for a franchise from Pinal County to
20 operate in county roadways also.

21 11. SPWC is current on Commission filings and is current on the payment of its property
22 taxes.

23 12. AVM, a limited liability company, is owned and controlled by AREAD Holdings, Inc.
24 whose president and CEO, Mr. Nariman Afkhami, testified that his corporation is in the process of
25 developing approximately 1,000 acres, part of which is in SPWC's certificated service and the
26 remainder of which is in AWC's adjacent certificated service area. He estimated that approximately
27

28 ¹ Mr. Adcox testified that at one point he had a well drilled, but the well's water quality was extremely poor and it was capped and abandoned.

1 1,500 residences will be built in SPWC's service area and the remainder, approximately 1,200
2 residences, will be built in AWC's service area.

3 13. According to Mr. Afkhami, he will secure more water from AWC to serve what will
4 be AVM's service area, but he ultimately plans to negotiate with AWC to sell and transfer what will
5 be AVM's utility system to AWC.²

6 14. With respect to arsenic content in the water provided to SPWC, AWC is developing a
7 plan to reduce the arsenic content well below the maximum allowable amount of 10 parts per billion
8 ("ppb") to meet the Arizona Department of Environmental Quality's ("ADEQ's") standards, and
9 towards this end the Commission has previously approved an accounting order for AWC's Casa
10 Grande system to recover arsenic treatment costs.

11 15. Besides being a developer, Mr. Afkhami has studied civil engineering and had an
12 ownership interest in the Willow Valley Water Company in Mohave County from 1990 to 1998.
13 AREAD's senior vice president, Lawrence Tysiac, is a licensed civil engineer who will be
14 responsible for all compliance and operational issues for AVM. He has previously worked as an
15 engineer for the cities of Parker, El Mirage, Buckeye and Tolleson and was responsible for water
16 operations. Additionally, AVM has also hired a certified operator to be responsible for the utility's
17 water testing and daily operations.

18 16. In the event that adequate water cannot be provided by AWC as development takes
19 place, AVM's management is prepared to expand its system by drilling wells and constructing
20 storage and distribution facilities to serve its certificated area.

21 17. According to the Staff Report, although AWC is providing water to SPWC which
22 meets ADEQ requirements and meets the standards of the Safe Drinking Water Act, on December 21,
23 2006, ADEQ issued a Drinking Water Compliance Status Report ("Status Report") which stated that
24 SPWC had major deficiencies in monitoring and reporting. The Status Report stated that SPWC had
25 no major deficiencies in operations and maintenance. SPWC had failed to prepare its coliform
26 analysis for October 2006 and did not accomplish required annual lead and copper monitoring for
27

28 ² Mr. Adcox testified that he had previously spoken with an AWC official concerning the sale of SPWC to AWC, but they had not come to terms on an agreement.

1 2004, 2005 and 2006. Due to these monitoring deficiencies, ADEQ was unable to determine if
2 SPWC's system is delivering water to its customers which meets the requirements of the Safe
3 Drinking Water Act. In order to reach "compliance" status, SPWC/AVM will have to demonstrate
4 monitoring compliance for a period of 12 months.

5 18. At the hearing, a copy of an ADEQ Status Report for SPWC dated May 14, 2007,
6 showed that SPWC had no monitoring and reporting deficiencies. Additionally, copies of ADEQ
7 microbiological reports for March and April 2007 showed that no coliform matter was present in
8 SPWC's water when tested.

9 19. Although SPWC has not previously filed a Curtailment Tariff, AVM indicated its
10 willingness to file a Curtailment Tariff for Commission approval.

11 20. Staff is recommending the approval of the application herein subject to the following
12 conditions:

- 13 • that AVM continue to charge the authorized rates and charges of SPWC;
- 14 • that AVM file, within 90 days of the effective date of this Decision, with the
15 Commission's Docket Control, as a compliance item in this docket, copies of the
16 documentation which transfers ownership of SPWC's assets to AVM;
- 17 • that AVM file, within 180 days of the effective date of this Decision, with the
18 Commission's Docket Control, as a compliance item in this docket, a franchise issued
19 by the Pinal County Board of Supervisors for AVM's certificated service area;
- 20 • that AVM file, for the 12 months from the effective date of this Decision, with the
21 Commission's Docket Control, as a compliance item in this docket, ADEQ
22 documentation which establishes that AVM's water is being monitored and tested
23 monthly for total coliform analysis and establishes that AVM is providing water which
24 meets the requirements of the Safe Drinking water Act; and
- 25 • that AVM file, within 45 days of the effective date of this Decision, with the
26 Commission's Docket Control, as a compliance item in this docket, a Curtailment
27 Tariff which generally conforms to that found on the Commission's website.

28 21. Staff further recommends that the Commission's Decision approving the transfer of

1 Certificate and assets to AVM, be considered null and void, after due process, should AVM fail to
2 meet the second, third, fourth, and fifth conditions listed above.

3 22. Under the circumstances, we believe that the application should be approved subject to
4 Staff's recommendations herein.

5 23. Because an allowance for the property tax expenses of the utility company is included
6 in its rates and will be collected from its customers, the Commission seeks assurances from the
7 company that any taxes collected from ratepayers have been remitted to the appropriate taxing
8 authority. It has come to the Commission's attention that a number of utility companies have been
9 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
10 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure, AVM
11 should annually file, as part of its annual report, an affidavit with the Utilities Division attesting that
12 the company is current in paying its property taxes in Arizona.

13 * * * * *

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

16 **CONCLUSIONS OF LAW**

17 1. SPWC is a public service corporation within the meaning of Article XV of the
18 Arizona Constitution and A.R.S. §§ 40-281, 40-282, and 40-285.

19 2. The Commission has jurisdiction over SPWC and of the subject matter of the
20 application.

21 3. There is continuing need for the provision of water utility service to the public in the
22 SPWC's certificated service area.

23 4. AVM is a fit and proper entity to receive the assets and Certificate of SPWC.

24 5. Notice of the SPWC's application as described herein was given in the manner
25 prescribed by law.

26 6. The conditions as set forth in Findings of Fact Nos. 20 and 21 are reasonable and
27 should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the application of Signal Peak Water Company, Inc. for approval of the sale of utility assets and transfer of its Certificate of Convenience and Necessity to AVM-2005, L.L.C. is hereby approved.

IT IS FURTHER ORDERED that AVM-2005, L.L.C. shall continue to charge water customers the existing rates and charges until further Order by the Commission.

IT IS FURTHER ORDERED that AMV-2005, L.L.C. shall comply in all respects with Findings of Fact No. 20 and Conclusion of Law No. 6.

IT IS FURTHER ORDERED that the authorization granted hereinabove shall be null and void, after due process, if AVM-2005, L.L.C. fails to timely file the documentation required to be filed in Findings of Fact No. 20.

IT IS FURTHER ORDERED that AVM-2005, L.L.C. shall file, as part of its annual report, an affidavit with the Utilities Division attesting that the company 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 _____, 2007.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR: SIGNAL PEAK WATER COMPANY, INC

2 DOCKET NOS.: W-02109A-06-0751 and W-20496A-06-0751

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