

OPEN MEETING ITEM
ORIGINAL



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



RECEIVED
ARIZONA CORPORATION COMMISSION

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2007 AUG -6 P 4: 26

DATE: AUGUST 6, 2007
ARIZONA CORPORATION COMMISSION
DOCKET CONTROL
DOCKET NO: W-01445A-06-0662

TO ALL PARTIES:

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

ARIZONA 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:

AUGUST 15, 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:

AUGUST 21, 2007 and AUGUST 22, 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 Director's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

Arizona Corporation Commission
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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
ARIZONA WATER COMPANY FOR AN
EXTENSION OF ITS EXISTING CERTIFICATE
OF CONVENIENCE AND NECESSITY.

DOCKET NO. W-01445A-06-0662

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: April 30, 2007
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
APPEARANCES: Mr. Robert W. Geake, Vice President and General Counsel, on behalf of Arizona Water Company; and
Mr. Charles Hains, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On October 16, 2006, Arizona Water Company ("AWC" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for an extension of its Certificate of Convenience and Necessity ("Certificate" or "CC&N") to include a development known as Ghost Hollow Estates in Pinal County.
On November 14, 2006, the Commission's Utilities Division ("Staff") filed a Letter of Insufficiency in this matter.
On January 10, 2007, AWC filed its Response to Staff's Insufficiency Letter.
On February 8, 2007, Staff filed a Sufficiency Letter in this docket indicating that the Applicant's application has met the sufficiency requirements as outlined in the Arizona Administrative Code ("A.A.C.").
On March 9, 2007, Staff filed a Motion to extend time for filing ("Motion") its Staff Report to

1 April 9, 2007. Also on the same date, by Procedural Order, the matter was set for hearing to begin on
2 April 30, 2007.

3 On March 12, 2007, by Procedural Order, Staff's Motion for an extension of time to file its
4 Staff Report was granted.

5 On March 30, 2007, AWC filed its Certificate of Notice in accordance with the law.

6 On April 9, 2007, Staff filed its Staff Report recommending approval of AWC's application,
7 but recommending that AWC be required to file a copy of the developer's Certificate of Assured
8 Water Supply ("CAWS"), for the proposed extension area.

9 On April 16, 2007, AWC filed objections to Staff's Report, indicating that AWC has a
10 Physical Availability Demonstration ("PAD") for its Casa Grande system, which includes the
11 proposed extension area.

12 On April 30, 2007, a full public hearing was held as scheduled. During the hearing issues
13 were raised as to whether the proposed extension area in this docket was also a part of the proposed
14 extension area in Docket No. W-01445A-04-0743. At the conclusion of the hearing, the issue was
15 taken under advisement.

16 By Procedural Order issued May 14, 2007, it was determined that based on the testimony
17 presented at the hearing, the proposed extension area in this docket will not be included as part of
18 Docket No. W-01445A-04-0743, and the time clock in this matter was extended pending the filing of
19 late-filed exhibits related to this application.

20 On June 1, 2007, AWC filed a late-filed exhibit demonstrating that the City of Casa Grande
21 will provide wastewater utility service in the proposed extension area.

22 On June 12, 2007, Staff filed its Response to AWC's late-filed exhibit.

23 * * * * *

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

26 **FINDINGS OF FACT**

27 1. Pursuant to authority granted by the Commission, AWC is an Arizona corporation
28

1 providing water utility service to approximately 98,000 customers in eight counties in Arizona.
2 AWC was granted its initial Certificate in Decision No. 28794 (March 1955).

3 2. AWC is in good standing with the Commission's Corporation Division.

4 3. AWC provides water utility service to customers in portions of Cochise, Coconino,
5 Gila, Maricopa, Navajo, Pima, Pinal and Yavapai Counties.¹

6 4. On October 16, 2006, AWC filed an application with the Commission for an extension
7 of its CC&N to provide water service in portions of Pinal County, Arizona. The proposed extension
8 area is more fully described in Exhibit A, attached hereto and incorporated herein by reference.

9 5. Specifically, AWC's application seeks authority to extend its service territory to
10 include a development known as Ghost Hollow Estates. Staff further states, Ghost Hollow Estates
11 will add approximately one-eighth square miles or 80 acres to AWC's existing 145 square miles of
12 Certificated area.

13 6. Ghost Hollow Estates will contain approximately 260 single-family residential lots
14 and will be built in two (2) phases, with each phase including 130 single family lots.

15 7. Ghost Hollow Estates is the subject of another CC&N extension application filed by
16 AWC in Docket No. W-01445A-04-0743, in which AWC seeks to include Ghost Hollow Estates and
17 Copper Mountain Ranch in its CC&N.

18 8. According to Staff, due to pending litigation regarding Copper Mountain Ranch,²
19 AWC's application in W-01445A-04-0743 has been brought to a standstill. Staff explained that AWC
20 has a request for service from MC Homes, LLC, the developers of Ghost Hollow Estates, and that
21 MC Homes, LLC has requested that AWC proceed with providing them with water utility service,
22 independent of the Copper Mountain Ranch area.

23 9. Staff's Engineering Report shows AWC has 18 wells producing over 20,000 gallons
24 per minute ("GPM"), over 14 million gallons of storage capacity, and a distribution system serving
25 approximately 21,000 service connections. AWC anticipates serving 260 additional customers in the
26 proposed extension area within five years.

27 ¹ AWC is a wholly-owned subsidiary of Utility Investment Company, which is a wholly-owned subsidiary of United
Resources, Inc.

28 ² CMR/Casa Grande L.L.C. v. City of Casa Grande et al., CV05-9472 PHX-SMMM.

1 10. AWC's witness³ testified that AWC will not need additional production or storage
2 facilities to serve the proposed extension area, and that AWC will tie into its existing distribution
3 system through a 12-inch main on Pinal Avenue and an 8-inch main on Tuzigoot to provide service to
4 the proposed extension area. (Tr. Pg. 18. lines 11-19)

5 11. Staff concluded that based on AWC's existing water system, AWC will have
6 adequate production and storage capacity to serve the existing and proposed CC&N extension areas
7 within a conventional five year planning period and can reasonably be expected to develop additional
8 production and storage as required in the future.

9 12. AWC's witness testified that AWC expects to finance the facilities needed for the
10 proposed extension area with advances in aid of construction. (Tr. Pg. 20, lines 4-9) AWC estimates
11 that the total project cost will be \$681,114. Staff analyzed the proposed costs for facilities needed in
12 the extension area and concluded that they are reasonable and appropriate, but that no "used and
13 useful" determination of the proposed plant in service was made, and no conclusions should be
14 inferred for rate making or rate base purposes.

15 13. AWC has not submitted its Arizona Department of Environmental Quality ("ADEQ")
16 Certificate of Approval to Construct ("ATC") for the facilities needed to serve the requested
17 extension area. Staff recommends that AWC file with Docket Control as a compliance item in this
18 docket, a copy of the ADEQ ATC for facilities needed to serve to extension area within two years of
19 the effective date of an Order in this matter.

20 14. AWC has stated that the City of Casa Grande will provide the wastewater treatment
21 service for the proposed extension area.

22 15. On June 1, 2007, AWC filed a Notice of Filing Late Filed Exhibit, which included a
23 copy of the Water Service Agreement and the Sewer Service Agreement between the City of Casa
24 Grande and the owners/developer of Ghost Hollow Estates.

25 16. Staff reviewed AWC's late-filed exhibit, and Staff stated the exhibit demonstrates the
26 City of Casa Grande's commitment to provide sewer service in the proposed extension area.

27
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³ Mr. James T. Wilson, Senior Engineer for AWC.

1 17. ADEQ regulates the AWC water system under ADEQ Public Water System I.D., #11-
2 009. ADEQ has determined that AWC is currently delivering water that meets the water quality
3 standards required by the A.A.C.

4 18. AWC is located within the Pinal Active Management Area ("AMA") and is in
5 compliance with its reporting and conservation requirements.

6 19. Staff recommends that AWC file with Docket Control as a compliance item in this
7 docket a copy of the developers' Certificate of Assured Water Supply ("CAWS"), within two years
8 of the effective date of the final decision in this matter.

9 20. AWC filed an objection to Staff's recommendation regarding the filing of the CAWS.
10 AWC's objected to Staff's recommendation because it has a PAD from the Arizona Department of
11 Water Resources ("ADWR") AWC believes it should be substituted for Staff's requirement of a
12 CAWS. However at the hearing, AWC's witness testified that the developer has a pending
13 application with the ADWR for a CAWS and expects that if the Commission approves the
14 application in this docket, ADWR would immediately issue the CAWS for the proposed extension
15 area.

16 21. Staff's witness explained that a PAD is the first step in getting a CAWS, and that a
17 PAD states there is water available in a given area, whereas a CAWS is more specific to the
18 subdivision and lot that there is unallocated water, legally available. Based on that distinction, Staff's
19 witness continued to recommend that AWC file a CAWS in this matter.

20 22. The Utilities Division Compliance Section stated AWC has no outstanding ACC
21 compliance issues.

22 23. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic
23 maximum containment level ("MCL") from 50 parts per billion ("ppb") to 10 ppb. The arsenic levels
24 in AWC's wells range from 7 ppb to 45 ppb. In Decision No. 67518 (January 20, 2005), the
25 Commission approved an accounting Order authorizing the deferral of certain costs and expenses
26 related to arsenic treatment that AWC expects to incur for its Western Group. AWC's Western
27 Group consists of the Casa Grande, White Tanks, Stanfield, and Ajo systems. The proposed
28 extension area is located in the AWC's Casa Grande System.

1 24. AWC's engineering witness testified that AWC has several arsenic treatment plants in
2 various stages of construction. He stated that one central treatment plant is complete and another is
3 nearing completion in the next three to six months. (Tr. Pg. 29, lines 15-24)

4 25. Commission Decision No. 66235 (July 23, 2004) approved AWC's curtailment tariff
5 for "All Service Areas".

6 26. AWC proposes to charge its authorized rates in the proposed extension area.

7 27. Pursuant to A.R.S. § 40-282(B), every Applicant for a CC&N and/or CC&N extension
8 is required to submit to the Commission evidence showing that the Applicant has received the
9 required consent, franchise or permit from the proper authority.

10 28. AWC has a franchise agreement with Pinal County.

11 29. AWC's witness testified that the proposed extension area will not have any high water
12 use amenities. (Tr. Pg. 22, lines 13-25)

13 30. Staff recommends approval of AWC's application for an extension of its existing
14 CC&N to provide water utility service in Pinal County, subject to the following conditions:

15 (a) That AWC charge its authorized rates and charges in the proposed extension area;

16 (b) That AWC file with Docket Control, as a compliance item in this docket, a copy of
17 the ADEQ ATC for facilities need to serve the requested areas within two years of
18 the effective date of a Decision in this matter; and

19 (c) That AWC file with Docket Control, as a compliance item in this docket, a copy of
20 the developers' CAWS, within two years of the effective date of a Decision in this
21 matter.

22 31. Staff further recommends that approval of AWC's application should be considered
23 null and void, after due process, if AWC fails to comply with the above referenced conditions within
24 the timeframes specified.

25 32. Because an allowance for the property tax expense is included in rates and will be
26 collected from its customers, the Commission seeks assurances from AWC that any taxes collected
27 from ratepayers have been remitted to the appropriate taxing authority. It has come to the
28 Commission's attention that a number of water companies have been unwilling or unable to fulfill

1 their obligation to pay the taxes that were collected from ratepayers, some for as many as twenty
2 years. It is reasonable, therefore, that as a preventive measure AWC shall annually file, as part of its
3 annual report, an affidavit with the Utilities Division attesting that the company is current in paying
4 its property taxes in Arizona.

5 33. In recent months, the Commission has become increasingly concerned about the
6 prolonged drought in Central Arizona. Therefore, we believe AWC should be required to conserve
7 groundwater and that AWC should be prohibited from selling groundwater for the purpose of
8 irrigating any future golf courses within the certificated expansion areas or any ornamental lakes or
9 water features located in the common areas of the proposed new developments within the certificated
10 expansion areas.

11 34. Staff's recommendations are reasonable and should be adopted as amended herein.

12 **CONCLUSIONS OF LAW**

13 1. AWC is a public service corporation within the meaning of Article XV of the Arizona
14 Constitution and A.R.S. § 40-281 *et seq.*

15 2. The Commission has jurisdiction over AWC and the subject matter of the application.

16 3. Notice of the application was provided in accordance with law.

17 4. There is a public need and necessity for water utility services in the proposed
18 extension areas, as set forth herein.

19 5. AWC is a fit and property entity to receive an extension of its water Certificate for its
20 Casa Grande system.

21 **ORDER**

22 IT IS THEREFORE ORDERED that the application of Arizona Water Company for an
23 extension of its Certificate of Convenience and Necessity in Pinal County and as described in Exhibit
24 A, attached hereto and incorporated herein, is hereby approved, subject to the conditions and
25 requirements recommended by Staff and outlined in the following ordering paragraphs.

26 IT IS FURTHER ORDERED that Arizona Water Company shall file with Docket Control as
27 a compliance item in this docket, a copy of the Arizona Department of Environmental Quality
28

1 Approval to Construct for facilities needed to serve the extension, within two years of the effective
2 date of this Decision.

3 IT IS FURTHER ORDERED that Arizona Water Company shall file with Docket Control as
4 a compliance item in this docket, a copy of the developers' Certificate of Assured Water Supply for
5 the extension area, within two years of the effective date of this Decision.

6 IT IS FURTHER ORDERED that Arizona Water Company shall file with Docket Control as
7 a compliance item in this docket, a Notice demonstrating it has filed an amended legal description
8 deleting the area granted herein and known as Ghost Hollow Estates from its pending application in
9 Docket No. W-01445A-04-0743, within 14 days of the effective date of this Decision.

10 IT IS FURTHER ORDRED that if Arizona Water Company fails to comply with the above
11 conditions within the required time-frames the extension of its Certificate of Convenience and
12 Necessity conditionally granted herein shall become null and void, after due process.

13 IT IS FURTHER ORDERED that Arizona Water Company shall charge its existing rates and
14 charges currently on file with the Commission for its Casa Grande system, until further Order of the
15 Commission.

16 IT IS FURTHER ORDERED that in light of the on-going drought conditions in central
17 Arizona and the need to conserve groundwater, Arizona Water Company is prohibited from selling
18 groundwater for the purpose of irrigating any future golf courses within the certificated expansion
19 areas or any ornamental lakes or water features located in the common areas of the proposed new
20 developments within the certificated expansion areas.

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IT IS FURTHER ORDERED that Arizona Water Company shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that it 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 _____

YBK:db

1 SERVICE LIST FOR: ARIZONA WATER COMPANY

2 DOCKET NO.: W-01445A-06-0662

3
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EXHIBIT

CC&N Description

The South half of the Southeast quarter of Section 17, Township 5 South, Range 6 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.