

OPEN MEETING ITEM



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ORIGINAL



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

ARIZONA CORPORATION COMMISSION

RECEIVED

22

2007 AUG -6 P 2: 29

DATE: AUGUST 6, 2007

DOCKET NO: E-01749A-07-0237

AZ CORP COMMISSION  
DOCKET CONTROL

TO ALL PARTIES:

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

GRAHAM COUNTY ELECTRIC COOPERATIVE, INC.  
(TRANSFER ASSETS)

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.

Arizona Corporation Commission  
DOCKETED

AUG - 6 2007

DOCKETED BY nr

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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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  
GRAHAM COUNTY ELECTRIC COOPERATIVE,  
INC. TO TRANSFER CERTAIN ASSETS TO THE  
TOWN OF THATCHER AND TO AMEND ITS  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY IN RELATION THERETO.

DOCKET NO. E-01749A-07-0237

DECISION NO. \_\_\_\_\_

ORDER

Open Meeting  
August 21 and 22, 2007  
Phoenix, Arizona

**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 April 11, 2007, Graham County Electric Cooperative, Inc. ("Graham" or "Cooperative") filed with the Commission an application for authorization to transfer certain of its assets to the Town of Thatcher ("Thatcher" or "Town") and to amend its Certificate of Convenience and Necessity ("CC&N") in relation thereto.

2. On August 29, 2006, Thatcher wrote a letter to its citizens advising them of a ballot measure that would allow the Town to purchase a portion of Graham's assets. The initiative was approved by the citizens of Thatcher in the September 2006 election.

3. On September 6, 2006, Graham notified its members of Thatcher's election ballot that, if passed, would allow Thatcher to acquire a certain portion of Graham's certificated area. Graham

1 advised its members that passage of the ballot would result in Thatcher becoming the power provider  
2 for the affected area.

3 4. On May 15, 2007, Graham filed an Affidavit of Publication, indicating that notice of  
4 its filing was published on May 6, 2007, in the *Eastern Arizona Courier*, a newspaper of general  
5 circulation in Graham County.

6 5. On May 30, 2007, the Commission Utilities Division Staff ("Staff") filed its Staff  
7 Report recommending approval of the application.

8 6. On June 6, 2007, Graham filed Comments to the Staff Report, requesting amendment  
9 of one of Staff's conditions.

10 7. On June 15, 2007, Graham filed in the docket, copies of letters that it mailed to its  
11 members and the notice that Thatcher mailed to its citizens concerning the ballot measure.

12 8. On June 18, 2007, Staff and Graham filed a Stipulation that neither party believes a  
13 hearing is necessary in this matter.

14 9. Graham is a non-profit electric distribution cooperative certificated in Decision No.  
15 33006 (April 6, 1961), to operate in most areas of Graham County south and east of the San Carlos  
16 Apache Indian reservation. Graham currently serves approximately 6,000 members.

17 10. Thatcher is a municipal corporation which operates an electric distribution system  
18 within its corporate boundaries.

19 11. Graham proposes to transfer certain of its assets to Thatcher, and to delete that portion  
20 of its CC&N related to those assets. The transaction is predicated on an Agreement entered into  
21 between Graham and Thatcher in 1946, and amended in 1973 (the "Agreement"). The Agreement  
22 grants Thatcher the right to acquire certain portions of Graham's service territory in areas which  
23 Thatcher has annexed, upon issuance of a written notice, payment of a purchase price and fulfillment  
24 of other stipulated terms. The Agreement states that upon consummation of a purchase agreement  
25 between both entities, Graham would cede the portion of its service territory containing the assets  
26 acquired by Thatcher. As a result, Graham would apply for cancellation of its CC&N in relation to  
27 the ceded portion of its certificated territory, and Thatcher would immediately assume responsibility  
28 for the provision of service to the customers located in that area.

1           12.     Graham reports that the Town has exercised its option to purchase certain assets  
2 pursuant to the Agreement. Thatcher's request was approved by its citizens in the September 2006,  
3 primary election. On March 26, 2007, Graham and Thatcher entered into a purchase agreement for  
4 the sale and transfer of the Cooperative's assets located within the area for a sum of \$731,783.35. A  
5 copy of the legal description of the area to be transferred is attached hereto as Exhibit A, and  
6 incorporated herein by reference.

7           13.     The affected service area comprises approximately one square mile on the north side  
8 of Thatcher. The area is sparsely developed, containing approximately 30 residential customers and  
9 37 commercial and water pump customers. The inventory of items within the transfer area includes  
10 poles, wire, transformers, cable, meters and associated hardware.

11           14.     Based on a field review of the physical inventory and electric arrangement, including  
12 discussions with Graham's General Manager, Staff concludes the transfer of assets to Thatcher will  
13 not have a detrimental impact on the service reliability for the Graham system, and that the terms are  
14 reasonable. Staff states that its conclusion is contingent on the final separation of all electrical  
15 connections between the ceded service area and the adjacent distribution facilities owned by Graham.  
16 Staff believes it is important that there be no "co-mingling" of assets, and that Graham customers will  
17 be served through assets owned by Graham, and Thatcher customers will be served by assets owned  
18 by Thatcher.

19           15.     Staff believes that based on its observations and analysis, that there will be minimal, if  
20 any, reliability degradation due to the distribution changes occasioned by the transaction. Thatcher's  
21 present distribution system, south of the affected service area is large and densely populated in  
22 comparison to the service area being transferred. Therefore, Staff finds that Thatcher should be able  
23 to absorb the new service area with minimal impact on its existing system. As the service area grows  
24 in density, Thatcher would have sufficient opportunity to make necessary capital upgrades to insure  
25 system capacity reliability. It appears to Staff that the work required by Thatcher to ensure provision  
26 of service to its newly acquired customers would be routine. Furthermore, Staff states that the  
27 customers who will continue to be served by Graham should not experience any degradation in  
28 service quality. Staff notes the actions necessary for Graham to fully disconnect its system from the

1 area being annexed by Thatcher are minimal and restricted to a few locations.

2 16. Staff also finds that the proposed transaction will not impair its ability to continue to  
3 provide electric distribution service within the remainder of its service territory, and that the  
4 transaction will have no immediate negative financial impact on customers that will be transferred to  
5 Thatcher. According to Staff, Graham's current residential customers, with an average consumption  
6 of 755 KWh, will experience, after transfer to Thatcher, a decrease of \$1.76 in their monthly bills,  
7 from \$74.96 to \$73.20. If Graham's fuel adjustor is factored into the calculation, the transferred  
8 customers would experience a monthly saving of \$11.62, from \$86.58 to \$73.20.

9 17. Staff finds that the transaction could result in a net gain of approximately \$679,105.48  
10 (the difference between the purchase price of \$731,783.35 and the book value of the assets estimated  
11 at \$52,677.87) to Graham.

12 18. Graham has stated that it proposes to re-invest the gain from the sale to fund new  
13 capital improvements. The Cooperative states that this proposal is consistent with its current  
14 strategy of utilizing internally generated funds for capital improvements as opposed to drawing on its  
15 Commission-approved \$10.8 million long-term line of credit. According to Graham, as a result of its  
16 strategy of using internally generated funds, it has only drawn half of the \$10.8 million line of credit.  
17 Graham asserts that utilizing the gain to pay down existing debt could result in negative  
18 consequences, such as incurrence of prepayment penalties. Graham argues it would be more prudent  
19 to reinvest the sale proceeds in new capital investments necessary to accommodate growth, which has  
20 been spurred by the rejuvenation of mining activities in its certificated area.

21 19. Staff concurs with Graham's planned use of the sale proceeds and recommends that  
22 the sale proceed, with gains being utilized for new capital improvements only.

23 20. Upon consummation of the transaction, Graham will transfer 68 of its current  
24 customers to Thatcher. The Cooperative reports that it currently holds \$100 per customer as a  
25 customer deposit. Graham proposed to refund the deposit by a credit that reduces the customers' last  
26 bills.

27 21. Staff concurs with the Cooperative's proposal to apply the deposit as a credit to the  
28 customer's last bill; however, in the event the last bill is less than \$100, Staff recommends that

1 Graham refund the difference as a cash payment.

2       22. Staff confirmed that Graham is in good standing with the Commission's Corporations  
3 Division.

4       23. Staff concludes that the transaction is in the public interest as the projected gain from  
5 the sale will decrease Graham's borrowing for new capital improvements and the transferred  
6 customers will experience a decrease in their monthly bills under Thatcher's current tariff.

7       24. Staff recommends approving Graham's request to transfer certain assets to Thatcher.  
8 Staff further recommends cancelling Graham's CC&N in relation to the area annexed by Thatcher.

9       25. Staff further recommends:

10           (a) that Graham refund all customer deposits or prepayments, as a credit to the  
11 customer bill and/or cash disbursement, prior to consummation of the transaction;

12           (b) that Graham utilize the gains resulting from the transaction for new capital  
13 improvements only, and that Graham file as a compliance item in this docket within 60 days of the  
14 Commission order authorizing this transaction, a proposal identifying the specific new projects that  
15 will be funded with the gains realized from this transaction;

16           (c) that Graham complete the separation of its distribution system from the ceded  
17 service territory within 90 days of the closing date of its transaction;

18           (d) that Graham file with Docket Control a report, as a compliance item in this docket,  
19 within 30 days of separation of its distribution systems from the ceded service area, actions taken to  
20 separate the systems and a declaration that the customers in the affected area are being serviced  
21 exclusively by Thatcher; and

22           (e) that the Commission authorize Graham to engage in any transactions and to  
23 execute or cause to be executed, any documents necessary to effectuate the authorizations requested  
24 with the application, and that Graham file as a compliance item in this docket, all pertinent  
25 documents evidencing the consummation of this transaction, no longer than 30 days from the  
26 effective date of the transaction.

27       26. In its June 6, 2007, Comments to the Staff Report, Graham requested modification of  
28 one of Staff's recommendations. Graham requests that the recommendation to make refunds of

1 customer deposits prior to the consummation of the transaction to modified to read "following" the  
 2 close of the transaction. Graham explains that a final bill will not be rendered to the customer until  
 3 after the transaction has closed and the distribution systems have been separated.

4 27. Staff did not file a response to the Cooperative's June 6, 2007, Comments.

5 28. We find that for the reasons cited above, the proposed transaction is in the public  
 6 interest. Furthermore, we find that Staff's recommendations are reasonable and should be adopted,  
 7 except that the recommendation to refund deposits should be modified as suggested by Graham.

### 8 CONCLUSIONS OF LAW

9 1. Graham is a public service corporations within the meaning of Article XV of the  
 10 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

11 2. The Commission has jurisdiction over Graham and the subject matter of the  
 12 application.

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

14 4. Thatcher is a fit and proper entity to acquire Graham's assets in the area described in  
 15 Exhibit A, and to provide electric service to the citizens and entities located within the area to be  
 16 transferred.

17 5. Staff's recommendations contained in Findings of Fact Nos. 24 and 25 are reasonable  
 18 and should be adopted, as modified to provide for the refund of deposits following the closing of the  
 19 transaction and at the rendering of the final bill to the affected customers.

### 20 ORDER

21 IT IS THEREFORE ORDERED that the application of Graham County Electric Cooperative,  
 22 Inc. for approval of the transfer of assets located within the area described in Exhibit A, to the Town  
 23 of Thatcher, and the cancellation of its Certificate of Convenience and Necessity for the service area  
 24 being transferred to the Town of Thatcher, as described in Exhibit A, is approved as conditioned  
 25 herein.

26 IT IS FURTHER ORDERED that Graham County Electric Cooperative, Inc. shall refund all  
 27 customer deposits or prepayments, to those customers being transferred to the Town of Thatcher, as a  
 28 credit to the customer's final bill and to the extent such bill is less than the amount of the deposit, as a

1 cash disbursement.

2           IT IS FURTHER ORDERED that Graham County Electric Cooperative, Inc. shall utilize the  
3 gains resulting from the transaction for new capital improvements only, and shall file with Docket  
4 Control, as a compliance item in this docket within 60 days of the effective date of this Decision, a  
5 proposal identifying the specific new projects that will be funded with the gains realized from the  
6 transaction. The authorized use of the proceeds from the sale does not constitute or imply approval  
7 or disapproval by the Commission of any particular expenditure of such proceeds for purposes of  
8 establishing just and reasonable rates.

9           IT IS FURTHER ORDERED that Graham County Electric Cooperative, Inc. shall complete  
10 the separation of its distribution system from the ceded service territory within 90 days of the closing  
11 date of the transaction.

12           IT IS FURTHER ORDERED that Graham County Electric Cooperative, Inc. shall file with  
13 Docket Control, as a compliance item in this docket, within 30 days of separation of its distribution  
14 systems from the ceded service area, a report that details actions taken to separate the systems and a  
15 declaration that the customers in the affected area are exclusively being serviced by the Town of  
16 Thatcher.

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IT IS FURTHER ORDERED that Graham County Electric Cooperative, Inc. may engage in any transactions and execute or cause to be executed, any documents necessary to effectuate the authorizations requested in the application, and that Graham County Electric Cooperative, Inc. shall file with Docket Control, as a compliance item in this docket, all pertinent documents evidencing the consummation of this transaction, no longer than 30 days from the effective date of the transaction.

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 \_\_\_\_\_

1 SERVICE LIST FOR:

GRAHAM COUNTY ELECTRIC COOPERATIVE,  
INC.

2 DOCKET NOS.:

E-01749A-07-0237

3  
4 Michael M. Grant  
5 Gallagher & Kennedy, PA  
6 2575 East Camelback Road  
7 Phoenix, AZ 85016-9225

8 Sheryl A. Sweeney  
9 Ryley Carlock & Applewhite  
10 One North Central Ave, Suite 1200  
11 Phoenix, Arizona 85004-4417

12 Mr. Christopher Kempley, Chief Counsel  
13 Legal Division  
14 ARIZONA CORPORATION COMMISSION  
15 1200 West Washington Street  
16 Phoenix, Arizona 85007

17 Mr. Ernest Johnson, Director  
18 Utilities Division  
19 ARIZONA CORPORATION COMMISSION  
20 1200 West Washington Street  
21 Phoenix, Arizona 85007

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EXHIBIT A

1  
2 Legal Description of the area to be transferred to Thatcher and deleted from Graham County Electric  
Cooperative, Inc.'s Certificate of Convenience and Necessity

3  
4 That part of Section 26, Township 6 South, Range 25 East, of the Gila and salt Meridian, Graham  
County, Arizona, more particularly described as follows: That portion of Section 26 lying South of  
5 the Gila River.

6 That part of Section 35, Township 6 South, Range 25 East, of the Gila and Salt Meridian, Graham  
County, Arizona, more particularly described as follows: that portion of Section 35 lying South of the  
7 Gila River.

8 That part of Section 36, Township 6 South, Range 25 East, of the Gila and Salt Meridian, Graham  
County, Arizona, more particularly described as follows: that portion of Section 36 lying South of the  
9 Gila River.

10 That part of Section 1, Township 7 South, Range 25 East, of the Gila and Salt Meridian, Graham  
County, Arizona, more particularly described as follows: that portion of Section 1 lying South of the  
11 Gila River and North of US Highway 70.

12 That part of Section 2, Township 7 South, Range 25 East, of the Gila and Salt Meridian, Graham  
County, Arizona, more particularly described as follows: that portion of Section 2 lying North of First  
13 Street, Thatcher, AZ.

14 That part of Section 12, Township 7 South, Range 25 East, of the Gila and Salt Meridian, Graham  
County, Arizona, more particularly described as follows: That portion of Section 12 lying North of  
15 US Highway 70, excluding that portion of land lying within the City of Safford City Limits, being  
Graham County parcel numbers 104-32-012 and 104-30-010a.

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