

OPEN MEETING ITEM



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

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

DATE: OCTOBER 2, 2007
DOCKET NO: W-02481A-07-0168 and W-20540A-07-0168

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:

MARK GRAPP d/b/a SERVICEBERRY WATER COMPANY
(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:

OCTOBER 11, 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:

OCTOBER 23, 2007 and OCTOBER 24, 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.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 MARK GRAPP D/B/A SERVICEBERRY
10 WATER COMPANY FOR APPROVAL OF
11 THE SALE OF ITS ASSETS AND TRANSFER
12 OF ITS CERTIFICATE OF CONVENIENCE
13 AND NECESSITY TO VERNON VALLEY
14 WATER, INC.

DOCKET NO. W-02481A-07-0168
DOCKET NO. W-20540A-07-0168

DECISION NO. _____

PROCEDURAL ORDER

11 DATE OF HEARING: September 20, 2007

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

14 APPEARANCES: Vernon Valley Water, Inc., by its president, Mr.
15 Mark E. Grapp; and

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

19 **BY THE COMMISSION:**

20 On March 22, 2007, Mark Grapp d/b/a Serviceberry Water Company ("SWC") and Vernon
21 Valley Water, Inc. ("VVW") filed with the Arizona Corporation Commission ("Commission") an
22 application for approval of the sale of SWC's assets and transfer of SWC's Certificate of
23 Convenience and Necessity ("Certificate") to VVW.

24 On April 19, 2007, the Commission's Utilities Division ("Staff") issued a letter of
25 insufficiency which stated that the application had not met the sufficiency requirements of A.A.C. R-
26 14-2-411(C).

27 On July 10, 2007, Staff issued a letter of sufficiency.

28 On July 19, 2007, by Procedural Order, the Commission scheduled a hearing on September
20, 2007.

1 SWC provided notice pursuant to the terms of the Procedural Order.

2 On September 20, 2007, a full public hearing was convened before a duly authorized
3 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. VVW appeared
4 through its president, Mr. Mark Grapp, and Staff appeared with counsel. At the conclusion of the
5 hearing, the matter was taken under advisement pending submission of a Recommended Opinion and
6 Order to the Commission.

7 * * * * *

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

10 **FINDINGS OF FACT**

11 1. Pursuant to the authority granted by the Commission in Decision No. 57852 (May 14,
12 1992) SWC provides public water utility service to 19 customers approximately 18 miles east of
13 Show Low, Apache County, Arizona.

14 2. In approximately 1991, Mr. Mark Grapp personally purchased the assets of the utility
15 from its former owner. After approval of the sale of the assets and transfer of the Certificate by the
16 Commission in Decision No. 57852, Mr. Grapp operated SWC as a sole proprietorship until 2003.

17 3. After operating SWC as a sole proprietorship for eleven years, Mr. Grapp formed
18 VVW, which he incorporated in Arizona on March 21, 2003, to own and operate the utility.

19 4. On March 22, 2007, Mr. Grapp d/b/a SWC filed an application with the Commission
20 requesting the Commission's approval for the sale of SWC's assets and transfer of its Certificate to
21 VVW. To facilitate Commission approval of the transaction, Mr. Grapp, during the hearing, agreed
22 to promptly file documentation which confirms the transfer of the utility's assets from himself to his
23 corporation, VVW.

24 5. VVW is an Arizona corporation in good standing with the Commission, and is owned
25 by Mr. Grapp and his wife, Barbara.

26 6. Presently, Mr. Grapp is VVW's president and manager.

27 7. Mr. Grapp is VVW's certified operator and handles water sampling and related
28 activities for the system. He will continue in this capacity after the sale and transfer are approved by

1 the Commission.

2 8. As required by the Commission's Procedural Order, notice was provided of the
3 application for approval for the sale of assets and transfer of SWC's Certificate to VVW.

4 9. Any obligations due for refunds and/or deposits from SWC's existing customers will
5 be assumed or have previously been paid by VVW.

6 10. VVW will charge the rates and charges previously authorized for SWC by the
7 Commission.

8 11. Mr. Grapp testified that a county franchise has recently been issued to VVW to
9 operate its system in county rights of way by the Apache County Board of Supervisors ("Board"),
10 and VVW will file a copy of the franchise agreement with the Commission in this docket after its
11 receipt from the Board.

12 12. VVW, which has been operating the system, is current on Commission filings and is
13 current on the payment of its sales and property taxes.

14 13. The utility's well has arsenic content well below the maximum allowable amount of
15 10 parts per billion ("ppb") based on recent arsenic tests and VVW's water meets the Arizona
16 Department of Environmental Quality's ("ADEQ's") standards made effective in January 2006.

17 14. Mr. Grapp will transfer the ownership of SWC's well site, storage facilities,
18 distribution system and all other assets to VVW upon the Commission's approval of the application
19 and will file copies of all documents transferring ownership with the Commission.

20 15. During the hearing, Mr. Grapp acknowledged that he owns and operates three other
21 public water systems as follows: A. Petersen Water Company; Cedar Grove Water, Inc.; and Watco,
22 Inc.

23 16. A. Petersen Water Company, an Arizona corporation in good standing, was acquired a
24 number of years ago by Mr. Grapp when he purchased its stock from the former owners.

25 17. Mr. Grapp personally acquired the assets of Cedar Grove Water Company several
26 years ago from its former owners. In March 2003, he formed a corporation, Cedar Grove Water, Inc.,
27 an Arizona corporation in good standing, to continue the utility's operations. Mr. Grapp stated this
28 utility has an application pending in Docket No. W-02597A-07-0169, et al. requesting Commission

1 approval for the sale of the utility's assets and transfer of its Certificate to the corporate entity.

2 18. According to the Staff Report, SWC/VVW is providing water which meets ADEQ
3 requirements and meets the standards of the Safe Drinking Water Act.

4 19. SWC/VVW has previously filed a Backflow Prevention Tariff and a Curtailment
5 Tariff, both of which were approved by the Commission.

6 20. Staff is recommending the approval of the application herein subject to the following
7 conditions:

- 8 • that VVW continue to charge the authorized rates and charges of SWC;
- 9 • that Mark Grapp file, within 90 days of the effective date of this Decision, with the
10 Commission's Docket Control, as a compliance item in this docket, copies of all
11 documentation transferring ownership of SWC's assets to VVW;
- 12 • that VVW file, within 365 days of the effective date of this Decision, with the
13 Commission's Docket Control, as a compliance item in this docket, a copy of its
14 Apache County franchise; and
- 15 • that VVW file by June 30 2009, an application for a rate increase using a 2008 test
16 year, if its 2008 Annual Report shows an operating loss.

17 21. Staff further recommends that the Commission's Decision approving the transfer of
18 Certificate and assets to VVW, be considered null and void, after due process, should VVW fail to
19 meet the second, third and fourth conditions listed above.

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

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

1 the company is current in paying its property taxes in Arizona.

2 **CONCLUSIONS OF LAW**

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

5 2. The Commission has jurisdiction over SWC and of the subject matter of the
6 application.

7 3. There is continuing need for the provision of water utility service to the public in the
8 SWC's certificated service area.

9 4. VVW is a fit and proper entity to receive the assets and Certificate of SWC.

10 5. Notice of the application as described herein was given in the manner prescribed by
11 law.

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

14 **ORDER**

15 IT IS THEREFORE ORDERED that the application of Mark Grapp d/b/a Serviceberry Water
16 Company and Vernon Valley Water, Inc. for approval of the sale of utility assets and transfer of
17 Certificate of Convenience and Necessity to Vernon Valley Water, Inc. is hereby approved.

18 IT IS FURTHER ORDERED that Vernon Valley Water, Inc. shall continue to charge water
19 customers the existing rates and charges until further Order by the Commission.

20 IT IS FURTHER ORDERED that Mark Grapp d/b/a Serviceberry Water Company and
21 Vernon Valley Water, Inc. shall comply in all respects with Findings of Fact No. 20 and Conclusion
22 of Law No. 6.

23 IT IS FURTHER ORDERED that the authorization granted hereinabove shall be null and
24 void, after due process, if Mark Grapp d/b/a Serviceberry Water Company and Vernon Valley Water,
25 Inc. fail to timely file the documentation required to be filed in Findings of Fact No. 20.

26 ...

27 ...

1 IT IS FURTHER ORDERED that Vernon Valley Water, Inc. shall file, as part of its annual
2 report, an affidavit with the Utilities Division attesting that the company is current on paying its
3 property taxes in Arizona.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2007.

17 _____
18 DEAN S. MILLER
19 INTERIM EXECUTIVE DIRECTOR

20
21 DISSENT _____

22 DISSENT _____

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MES: db

1 SERVICE LIST FOR: MARK GRAPP D/B/A SERVICEBERRY WATER COMPANY

2 DOCKET NOS.: W-02481A-07-0168 and W-20540A-07-0168

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