

OPEN MEETING ITEM



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

ORIGINAL



ARIZONA CORPORATION COMMISSION

DATE: OCTOBER 2, 2007
DOCKET NO: W-02597A-07-0169 and W-20541A-07-0169

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:

CEDAR GROVE WATER COMPANY, ET AL.
(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
9 OF MARK GRAPP D/B/A CEDAR GROVE
10 WATER COMPANY FOR APPROVAL OF
11 THE SALE OF ITS ASSETS AND
12 TRANSFER OF ITS CERTIFICATE OF
13 CONVENIENCE AND NECESSITY TO
14 CEDAR GROVE WATER, INC.

DOCKET NO. W-02597A-07-0169
DOCKET NO. W-20541A-07-0169

DECISION NO. _____

10 OPINION AND ORDER

11 DATE OF HEARING:

September 20, 2007

12 PLACE OF HEARING:

Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

14 APPEARANCES:

Cedar Grove Water, Inc., by its president, Mr.
Mark E. Grapp; and

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

18 **BY THE COMMISSION:**

19 On March 22, 2007, Mark Grapp d/b/a Cedar Grove Water Company ("CGW") and Cedar
20 Grove Water, Inc. ("CGWI") filed with the Arizona Corporation Commission ("Commission") an
21 application for approval of the sale of CGW's assets and transfer of its Certificate of Convenience
22 and Necessity ("Certificate") to CGWI.

23 On April 20, 2007, the Commission's Utilities Division ("Staff") issued a letter of
24 insufficiency which stated that the application had not met the sufficiency requirements of A.A.C.
25 R14-2-411(C).

26 On July 12, 2007, Staff issued a letter of sufficiency

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

1 CGW 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. CGWI 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. 57990 (August
12 26, 1992) CGW provides public water utility service to 340 customers approximately 13 miles east of
13 Show Low, Apache County, Arizona.

14 2. In 1992, Mr. Mark Grapp personally purchased the assets of the utility from the
15 former owners. After approval of the sale and transfer of the Certificate by the Commission in
16 Decision No. 57990, Mr. Grapp operated CGW as a sole proprietorship until 2006.

17 3. Mr. Grapp incorporated CGWI in Arizona on March 21, 2003 to continue utility
18 operations in the future, but he did not transfer any assets to it until 2006

19 4. On March 22, 2007, Mark Grapp d/b/a CGW filed an application with the
20 Commission requesting the Commission's approval for the sale of CGW's assets and transfer of its
21 Certificate to CGWI. Mr. Grapp testified that to facilitate Commission approval of the transaction
22 that he filed documentation with the Commission which confirmed the transfer of the utility's real
23 property where wells and storage facilities were located to CGWI by means of a quit claim deed
24 which had been executed by he and his wife individually.

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

27 6. Presently, Mr. Grapp is CGWI's president and manager.
28

1 7. Mr. Grapp is CGWI's certified operator and handles water sampling and related
2 activities for the system. He will continue in this capacity after the sale and transfer are approved by
3 the Commission.

4 8. As required by the Commission's Procedural Order, CGW provided notice of the sale
5 of assets and transfer of its Certificate.

6 9. Any obligations due for refunds and/or deposits from CGW's existing customers will
7 be assumed or have previously been paid by CGWI.

8 10. CGWI will charge the rates and charges previously authorized for CGW by the
9 Commission.

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

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

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

18 14. Presently, the utility has a rate case pending in Docket No. W-02597A-06-0308.

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

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

24 17. Mr. Grapp personally acquired the assets of Serviceberry Water Company several
25 years ago from its former owner. In March 2003, he formed a corporation, Vernon Valley Water,
26 Inc., an Arizona corporation in good standing, to continue the utility's operations. Mr. Grapp stated
27 this utility has an application pending in Docket No. W-02481A-07-0168, et al. requesting
28 Commission approval for the sale of the utility's assets and transfer of its Certificate to the corporate

1 entity.

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

4 19. CGW/CGWI 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 • continue to charge the authorized rates and charges of CGW; and
9 • that CGWI file, within 365 days of the effective date of this Decision, with the
10 Commission's Docket Control, as a compliance item in this docket, a copy of its
11 Apache County franchise.

12 21. Staff further recommends that the Commission's Decision approving the transfer of
13 Certificate and assets to CGWI, be considered null and void, after due process, should CGWI fail to
14 meet the second condition listed above.

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

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

25 **CONCLUSIONS OF LAW**

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

28 2. The Commission has jurisdiction over CGW and of the subject matter of the application.

1 3. There is continuing need for the provision of water utility service to the public in the
2 CGW's certificated service area.

3 4. CGWI is a fit and proper entity to receive the assets and Certificate of CGW.

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

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

7 **ORDER**

8 IT IS THEREFORE ORDERED that the application of Mark Grapp d/b/a Cedar Gove Water
9 Company and Cedar Grove Water, Inc. for approval of the sale of utility assets and transfer of
10 Certificate of Convenience and Necessity to Cedar Grove Water, Inc. is hereby approved.

11 IT IS FURTHER ORDERED that Cedar Grove Water, Inc. shall continue to charge water
12 customers the existing rates and charges until further Order by the Commission.

13 IT IS FURTHER ORDERED that Cedar Grove Water, Inc. shall comply in all respects with
14 Findings of Fact No. 20 and Conclusion of Law No. 6.

15 IT IS FURTHER ORDERED that the authorization granted hereinabove shall be null and
16 void, after due process, if Cedar Grove Water Company, Inc. fails to timely file the documentation
17 required to be filed in Findings of Fact No. 20.

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1 IT IS FURTHER ORDERED that Cedar Grove 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 DISSENT _____

21 DISSENT _____

22 MES:db
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1 SERVICE LIST FOR:

CEDAR GROVE WATER COMPANY, ET AL.

2 DOCKET NOS.:

W-02597A-07-0169 and W-20541A-07-0169

3
4 Mark Grapp
5 CEDAR GROVE WATER, INC.
6 P.O. Box 1270
7 Show Low, Arizona 85902-1270

8 Christopher Kempsey, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
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