

ORIGINAL

OPEN MEETING



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MEMORANDUM RECEIVED

Arizona Corporation Commission (110)

DOCKETED

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TO: THE COMMISSION

AZ CORP COMMISSION
DOCKET CONTROL

FROM: Utilities Division

DOCKETED BY 

DATE: October 4, 2007

RE: H₂O, INC. - REQUEST FOR TIME EXTENSION TO COMPLY WITH DECISION NO. 64062 (DOCKET NOS. W-02234A-00-0371, WS-02987A-99-0583, WS-02987A-00-0618, W-02859A-00-0774, AND W-01395A-00-0784)

In Decision No. 63960, dated September 4, 2001, and Decision No. 64062, dated October 4, 2001, the Arizona Corporation Commission ("Commission") granted certain extensions of the Certificates of Convenience and Necessity ("CC&Ns") of H₂O, Inc. ("H₂O" or "Company"), Diversified Water Utilities, Inc. ("Diversified"), Queen Creek Water Company ("Queen Creek") and Johnson Utilities, L.L.C. ("Johnson").

The Decision approved the extension of H₂O into Parcels 15, 16, 17, 18, and 22 along with the entire Section 13 in Township 2 South, Range 7 East in Pinal County, Arizona. The Commission also required:

1. That H₂O file, for each of the two years following the decision, documentation that H₂O was in compliance with ADEQ.
2. That H₂O file, within two years of the effective date of the decision, a copy of the developers' Certificates of Assured Water Supply ("CAWS") for the respective parcels and section.
3. That H₂O file within two years of the effective date of the Decision, a copy of its Certificate of Approval to Construct for the main extension to the Combs School.
4. That H₂O file within two years of the effective date of the Decision, a copy of its Certificate of Approval to Construct and Certificates of Approval of Construction for each of the respective approved parcels.
5. That H₂O file within two years of the effective date of the Decision, a copy of its franchise from Pinal County for the extension areas.
6. That H₂O file, within two years of the effective date of the Decision, a request for a Certificate review after which, Staff, at its discretion, shall perform a physical plant inspection to determine the extent to which development has commenced. The Certificate review should include the number of customers, the amount of plant installed,

the number of gallons sold and the amount of revenue related to the extension area. The review should also include the Master Plan showing all plant installed and customer location and any other information Staff deems relevant. After H₂O's request for review, Staff shall have 120 days to file a report containing one of the following three recommendations: 1. Final approval of the Certificate for all parcels approved; 2. Final approval of the Certificate for portions of the parcels with cancellation of the undeveloped portions; 3. Disapproval of the Certificate for the parcels approved.

On September 11, 2003, H₂O filed a request for an extension of time to comply with Decision No. 64062 and requested a two-year extension of time to file copies of the developers' CAWS and Certificates of Approval to Construct ("CAC"). On October 30, 2003, the Commission issued a Procedural Order approving a two-year extension to comply with Decision No. 63960 as amended by Decision No. 64062. Thus, the compliance date for the Decision was moved to from October 4, 2003 to October 4, 2005. The Procedural Order also required that "good cause" be shown before any further time extensions be granted.

On July 5, 2006, Staff contacted H₂O regarding compliance issues. The Company filed a letter dated and docketed August 9, 2006, responding to the compliance inquiry and requesting an extension of the filing date for the Approvals to Construct, the Approvals of Construction and the Certificates of Assured Water Supply for Parcels 14, 16, 17, and 18 and Section 13 until December 31, 2007. The Company believes, and Staff has verified, that the Company is in compliance for Parcels 15 and 22.

On September 1, 2006, in an effort to determine if there was still a need or request for service in the areas approved in Decision No. 64062, Staff sent H₂O a letter requesting "signed statements from the developers in each parcel and Section 13 which describes the progress each developer has made toward acquiring the necessary permits, certificates, etc., the physical progress made toward development and when the first customer in each development is expected to be served." Staff requested the information be provided by October 1, 2006.

On February 22, 2007, H₂O met with Staff regarding the status of development in the parcels and sections for which H₂O received approval to extend its CC&N in Decision No. 64062, dated October 4, 2001. The meeting concluded with assurances from H₂O that a written summary of the status of development in each approved area would be shortly forthcoming. Soon thereafter, an email was sent by Staff to H₂O urging the production of the requested information.

On May 23, 2007, Staff again requested detail from the Company regarding the need for service. The Company replied to Staff's request on June 6, 2007. Staff docketed the Company's response with its memorandum for the time extension on July 26, 2007. The response contains letters from developers and from the Church of Jesus Christ of Latter Day Saints indicating that they desire to remain in H₂O's service territory. The Commission has received no correspondence or comments from Diversified, Queen Creek or Johnson, the parties in the original CC&N docket, indicating any disagreement with an extension.

The primary reason that the Company has not been able to file the CAWS or the CACs for most of the parcels is the amount of time it has taken the developers to receive approvals from Pinal County. Other reasons include a slight down-turn in the real estate market (although, H₂O is hooking up approximately 100 new customers each month) and developers discussions with Williams-Gateway Airport regarding flight paths.

On July 18, 2007, Staff members visited the Company and toured the extension area territory with representatives of the Company. It was apparent that development was progressing at different rates in different Parcels. It was also apparent that the Company had installed off-site plant facilities, and had sized storage tanks and lines to serve current customers and customers in the areas not yet developed. Staff also conducted a certificate review of the Company's extension area. The review noted significant growth in the number of customers, amount of plant installed, number of gallons sold and increased revenue.

Staff has reviewed the Company's request for an extension of the compliance dates set forth in Decision No. 64062 and believes that the Company's inability to meet the current compliance dates is related solely to the problems of the developers. Staff believes that granting an additional extension request would not be productive. Instead, as provided for in Decision No. 64062, Staff has reviewed and evaluated each of the granted Parcels and is recommending that final approval of the Certificate for all Parcels be approved as provided for in Decision No. 63960.

for 

Ernest G. Johnson
Director
Utilities Division

EGJ:KB:lh\CH

Originator: Kimberly Battista

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BEFORE THE ARIZONA CORPORATION COMMISSION

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

IN THE MATTER OF H₂O, INC.'S
REQUEST FOR TIME EXTENSION TO
COMPLY WITH DECISION NO. 64062

DOCKET NOS. W-02234A-00-0371
WS-02987A-99-0583
WS-02987A-00-0618
W-02859A-00-0774
W-01395A-00-0784

DECISION NO. _____
ORDER

Open Meeting
October 23 and 24, 2007
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. H₂O, Inc. ("H₂O" or "Company") is engaged in providing water within portions of Arizona, pursuant to authority granted by the Arizona Corporation Commission ("Commission).
 2. In Decision No. 63960, dated September 4, 2001, and Decision No. 64062, dated October 4, 2001, the Commission granted certain extensions of the Certificates of Convenience and Necessity ("CC&Ns") of H₂O, Diversified Water Utilities, Inc. ("Diversified"), Queen Creek Water Company ("Queen Creek") and Johnson Utilities, L.L.C. ("Johnson").
 3. The Decision approved the extension of H₂O into Parcels 15, 16, 17, 18, and 22 along with the entire Section 13 in Township 2 South, Range 7 East in Pinal County, Arizona. The Commission also required:
- ...

- 1 • That H₂O file, for each of the two years following the decision, documentation that
2 H₂O was in compliance with ADEQ.
- 3 • That H₂O file, within two years of the effective date of the decision, a copy of the
4 developers' Certificates of Assured Water Supply ("CAWS") for the respective
5 parcels and section.
- 6 • That H₂O file within two years of the effective date of the Decision, a copy of its
7 Certificate of Approval to Construct for the main extension to the Combs School.
- 8 • That H₂O file within two years of the effective date of the Decision, a copy of its
9 Certificate of Approval to Construct and Certificates of Approval of Construction for
10 each of the respective approved parcels.
- 11 • That H₂O file within two years of the effective date of the Decision, a copy of its
12 franchise from Pinal County for the extension areas.
- 13 • That H₂O file, within two years of the effective date of the Decision, a request for a
14 Certificate review after which, Staff, at its discretion, shall perform a physical plant
15 inspection to determine the extent to which development has commenced. The
16 Certificate review should include the number of customers, the amount of plant
17 installed, the number of gallons sold and the amount of revenue related to the
18 extension area. The review should also include the Master Plan showing all plant
19 installed and customer location and any other information Staff deems relevant. After
20 H₂O's request for review, Staff shall have 120 days to file a report containing one of
21 the following three recommendations: 1. Final approval of the Certificate for all
22 parcels approved; 2. Final approval of the Certificate for portions of the parcels with
23 cancellation of the undeveloped portions; 3. Disapproval of the Certificate for the
24 parcels approved.
- 25 4. On September 11, 2003, H₂O filed a request for an extension of time to comply
26 with Decision No. 64062 and requested a two-year extension of time to file copies of the
27 developers' CAWS and Certificates of Approval to Construct ("CAC").
- 28 5. On October 30, 2003, the Commission issued a Procedural Order approving a two-
year extension to comply with Decision No. 63960 as amended by Decision No. 64062. Thus, the
compliance date for the Decision was moved to from October 4, 2003 to October 4, 2005. The
Procedural Order also required that "good cause" be shown before any further time extensions be
granted.
6. On July 5, 2006, Staff contacted H₂O regarding compliance issues. The Company
filed a letter dated and docketed August 9, 2006, responding to the compliance inquiry and

1 ~~requesting an extension of the filing date for the Approvals to Construct, the Approvals of~~
2 Construction and the Certificates of Assured Water Supply for Parcels 14, 16, 17, and 18 and
3 Section 13 until December 31, 2007. The Company believes, and Staff has verified, that the
4 Company is in compliance for Parcels 15 and 22.

5 7. On September 1, 2006, in an effort to determine if there was still a need or request
6 for service in the areas approved in Decision No. 64062, Staff sent H₂O a letter requesting "signed
7 statements from the developers in each parcel and Section 13 which describes the progress each
8 developer has made toward acquiring the necessary permits, certificates, etc., the physical progress
9 made toward development and when the first customer in each development is expected to be
10 served." Staff requested the information be provided by October 1, 2006.

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12 the parcels and sections for which H₂O received approval to extend its CC&N in Decision
13 No. 64062, dated October 4, 2001. The meeting concluded with assurances from H₂O that a
14 written summary of the status of development in each approved area would be shortly
15 forthcoming. Soon thereafter, an email was sent by Staff to H₂O urging the production of the
16 requested information.

17 9. On May 23, 2007, Staff again requested detail from the Company regarding the
18 need for service. The Company replied to Staff's request on June 6, 2007. Staff docketed the
19 Company's response with its memorandum for the time extension on July 26, 2007. The response
20 contains letters from developers and from the Church of Jesus Christ of Latter Day Saints
21 indicating that they desire to remain in H₂O's service territory. The Commission has received no
22 correspondence or comments from Diversified, Queen Creek or Johnson, the parties in the original
23 CC&N docket, indicating any disagreement with an extension.

24 10. On July 18, 2007, Staff members visited the Company and toured the extension
25 area territory with representatives of the Company. It was apparent that development was
26 progressing at different rates in different parcels. It was also apparent that the Company had
27 installed off-site plant facilities, and had sized storage tanks and lines to serve current customers

28 ...

1 and customers in the areas not yet developed. Staff also conducted a certificate review of the
 2 Company's extension area. The review noted significant growth in the number of customers,
 3 amount of plant installed, number of gallons sold and increased revenue.

4 11. The primary reason that the Company has not been able to file the CAWS or the
 5 CACs for most of the parcels is the amount of time it has taken the developers to receive approvals
 6 from Pinal County. Other reasons include a slight down-turn in the real estate market (although,
 7 H₂O is hooking up approximately 100 new customers each month) and developers discussions
 8 with Williams-Gateway Airport regarding flight paths.

9 12. Staff has reviewed the Company's request for an extension of the compliance dates
 10 set forth in Decision No. 64062 and believes that the Company's inability to meet the current
 11 compliance dates is related solely to the problems of the developers. Staff believes that granting
 12 an additional extension request would not be productive. Instead, as provided for in Decision
 13 No. 64062, Staff has reviewed and evaluated each of the granted parcels, i.e., evidence of
 14 development such as subdivision platting, zoning, engineering design, master-planning, and
 15 construction of plant facilities, and is recommending that final approval of the Certificate for all
 16 parcels be approved as provided for in Decision No. 63960.

17 13. Staff recommends that the Company file all outstanding compliance requirements
 18 of Decision No. 64062 when they are received.

19 CONCLUSIONS OF LAW

20 1. H₂O, Inc. is a public service corporation within the meaning of Article XV of the
 21 Arizona Constitution and Arizona Revised Statutes §§ 40-252, 40-281 and 40-282.

22 2. The Commission has jurisdiction over H₂O, Inc. and of the subject matter of the
 23 application.

24 3. Notice of the application as described herein was given in the manner prescribed by
 25 law.

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ORDER

IT IS THEREFORE ORDERED, as provided for in Decision No. 63960, that final approval of the Certificate for all parcels be approved.

IT IS THEREFORE ORDERED that the outstanding compliance requirements of Decision No. 64062 shall remain in effect and H2O shall file the required documentation when received.

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

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

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

DEAN S. MILLER
Interim Executive Director

DISSENT: _____

DISSENT: _____

EGJ:KB:ihm\CH

1 SERVICE LIST FOR: H₂O, Inc.
2 DOCKET NOS. W-02234A-00-0371, et al.

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4 Sallquist, Drummond & O'Connor, P.C.
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15 Mr. Ernest G. Johnson
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