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AZ CORP MEMORANDUM
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Arizona Corporation Commission
DOCKETED

NOV - 6 2007

To: Docket Control
From: Ernest G. Johnson
Director Utilities Division

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Date: November 6, 2007

RE: STAFF'S LATE-FILED EXHIBIT: VALENCIA WATER COMPANY, INC. AND WATER UTILITY OF GREATER BUCKEYE, INC. - JOINT APPLICATION FOR TRANSFER OF ASSETS AND THE CERTIFICATE OF CONVENIENCE AND NECESSITY ("CC&N") OF WATER UTILITY OF GREATER BUCKEYE, INC. TO VALENCIA WATER COMPANY, INC. DOCKET NOS. W-01212A-06-0666 AND W-02451A-06-0666

On September 7, 2007, the Arizona Corporation Commission ("ACC" or "Commission") Utilities Division ("Staff") issued its Staff Report in this matter. Staff recommended approval of the Application, subject to several conditions listed in the Staff Report. On September 21, 2007, Applicant ("Valencia" or "Applicant") filed its Response to the Staff Report, citing several of Staff's conditions.

On October 10, 2007, a hearing in this matter was conducted before Administrative Law Judge ("ALJ") Yvette B. Kinsey. At the hearing, the Applicant objected to language contained in the Staff Report.

The Town of Buckeye ("Town") has initiated a condemnation action against WUGB. WUGB argued that there had been a violation of open meeting law in the Town's decision to file condemnation. The court agreed and the matter was dismissed without prejudice. At this point, there is no indication as to whether the Town intends to re-file for condemnation once the required open meeting takes place.

Staff recommended that Valencia be ordered to keep the Commission apprised of the status of the litigation by filing an update every quarter "until further Order of the Commission".

The Applicant objects to the language "until further Order of the Commission" because Valencia believes this could subject it to a reporting requirement "indefinitely".

At hearing, Staff argued that if the language were adopted, the report would become a “compliance filing”, overseen by the Compliance Section. At such time as Valencia believed the dispute was “final”, Valencia would submit its report saying exactly that. Valencia could include language, if it saw fit, stating that it believed that no further reports would therefore be necessary and could request that the Commission deem the matter “satisfied”.

The ACC Utilities Division’s Compliance Section, upon seeing the request that no further reports be required, would then forward the report and request to Legal Division for an opinion regarding the “termination” of the suit and the resulting satisfaction of the compliance item. If Legal Division agreed that the matter was satisfied, then the Compliance Section would simply file a letter in the docket stating that the matter had been satisfied and would write up a Recommended Order for the Commissioners stating that the item was no longer outstanding.

No. ARS § 40-252 amendment would need to be filed, and the matter would not need to be sent to hearing. It would simply be placed on an Open Meeting schedule, and the Commissioners could hear from Valencia and vote on the resolution. The Commissioners would be voting as to whether the reporting requirement had been satisfied. They could issue a new Order to that effect, rather than “modifying” an existing order under ARS §40-252.

In response to this argument, the Applicant’s Counsel argued that he had information from “higher pay grades” that Staff Counsel was incorrect. Judge Kinsey ordered Staff to file this late-filed exhibit by November 9th, indicating Staff’s “official” statement as to how these matters would be handled.

EGJ:BNC:red

Originator: Kevin Torrey / Blessing Chukwu

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Docket Nos. W-01212A-06-0666 and W-02451A-06-0666

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