

OPEN MEETING ITEM



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



ARIZONA CORPORATION COMMISSION

ORIGINAL

DATE: NOVEMBER 9, 2007

DOCKET NO: WS-04245A-07-0363

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda Martin. The recommendation has been filed in the form of an Opinion and Order on:

RED ROCK UTILITIES, LLC
(CC&N)

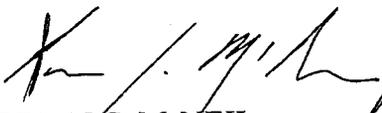
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 19, 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:

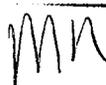
NOVEMBER 27, 2007 and NOVEMBER 28, 2007

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

Arizona Corporation Commission
DOCKETED

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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 RED ROCK UTILITIES, LLC FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE WATER SERVICE IN
12 PIMA COUNTY, ARIZONA.

DOCKET NO. WS-04245A-07-0363

DECISION NO. _____

OPINION AND ORDER

13 DATE OF HEARING: September 28, 2007

14 PLACE OF HEARING: Tucson, Arizona

15 ADMINISTRATIVE LAW JUDGE: Jane L. Rodda¹

16 APPEARANCES: Lawrence V. Robertson, Jr., on behalf of Red Rock
17 Utilities, LLC; and

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

21 **BY THE COMMISSION:**

22 Having considered the entire record herein and being fully advised in the premises, the
23 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

24 **FINDINGS OF FACT**

25 1. On June 13, 2007, Red Rock Utilities, LLC ("Red Rock" or "Company") filed with
26 the Arizona Corporation Commission ("Commission") an Application for a Certificate of
27 Convenience and Necessity to Provide Water Service ("Certificate" or "CC&N") in an
28 unincorporated area within Pima County, Arizona ("Application").

2. On July 13, 2007, the Commission's Utilities Division Staff ("Staff") notified the
Company that its application was administratively sufficient pursuant to the requirements of the
Arizona Administrative Code ("A.A.C.").

¹ Administrative Law Judge Jane L. Rodda conducted the hearing on this matter. Administrative Law Judge Belinda A. Martin wrote the Recommended Opinion and Order.

1 3. By Procedural Order issued July 31, 2007, this matter was scheduled for hearing on
2 September 28, 2007.

3 4. Pursuant to the July 31, 2007, Procedural Order, Red Rock mailed notice of the
4 hearing to all property owners in the affected area on August 15, 2007, and published Notice in the
5 *Arizona Daily Star* and the *Tucson Citizen* on August 7, 2007.

6 5. On September 4, 2007, the Company filed an Amended Application.

7 6. September 10, 2007, Staff filed its Staff Report in this matter. Staff recommended
8 approval of the Application subject to certain conditions.

9 7. On September 20, 2007, Red Rock filed Applicant's Response to Commission Staff
10 Report, stating that they were pleased with the Staff's recommendations and offered no exceptions or
11 objections.

12 8. On September 28, 2007, the hearing in this matter convened before a duly authorized
13 Administrative Law Judge.

14 9. On October 5, 2007, Staff filed a late-filed exhibit without objection by the Company.

15 10. Red Rock is a limited liability company currently providing water and sewer services
16 to over 30 customers in Red Rock, Arizona, approximately 40 miles northwest of the proposed
17 service area.² Diamond Ventures, Inc. is the manager of the Company.

18 11. Red Rock submitted the Application in response to correspondence from South
19 Wilmot Land Investors, LLC, the owners of the affected property, requesting that the Company
20 provide water service to their land. South Wilmot Land Investors, LLC, is also managed by Diamond
21 Ventures, Inc.

22 12. Red Rock is seeking the Certificate in order to provide water service to Verano
23 Community, a master-planned residential development of over 8,500 residential units and includes
24 parks, schools and mixed use areas, all within Pima County. The development plan encompasses
25 approximately 3,200 acres south of Tucson, Arizona and envisions construction in eight phases over
26 19-20 years.

27 _____
28 ² Red Rock's CC&N for this development is pursuant to Decision No. 67409, dated November 2, 2004, and the Company began serving its first customers in July, 2007.

1 13. The legal description of Red Rock's proposed service area is set forth in Exhibit A
2 attached to this Order. There are no other water service providers in the proposed service area. The
3 Red Rock representative testified that sewer service likely will be provided by Pima County Waste
4 Water Division.

5 14. When fully completed, the Verano Community water plant will consist of six wells,
6 two 750,000 gallon storage reservoirs, two booster station sites and the necessary delivery system
7 infrastructure. The first phase of construction is expected to consist of two wells, one 750,000 gallon
8 reservoir, a booster station and the delivery system at a cost of approximately \$5.8 million.

9 15. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic
10 maximum contaminant level ("MCL") in drinking water from 50 micrograms per liter ("µg/l") to 10
11 µg/l. The date for compliance with the new MCL was January 23, 2006. The arsenic levels for the
12 development's well sources are unknown at this time, but Staff expects that should the site's arsenic
13 levels need to be lowered, such issue will be addressed in the Approval to Construct from the Arizona
14 Department of Environmental Quality ("ADEQ").

15 16. Red Rock proposed an initial rate composed of graduated Monthly Usage Charges and
16 three tier commodity rates. Staff agreed with the Company's base rates but recommends price
17 changes to the Company's proposed commodity rate structure to encourage conservation efforts. Red
18 Rock's proposed rates and charges, and Staff's recommended rates and charges, are as follows:

	Proposed Rates		
	<u>Company</u>	<u>Staff</u>	
19			
20	<u>MONTHLY USAGE CHARGE:</u>		
21	5/8" x 3/4" Meter	\$29.00	\$29.00
22	3/4" Meter	43.50	43.50
23	1" Meter	72.50	72.50
24	1 1/2" Meter	145.00	145.00
25	2" Meter	232.00	232.00
26	3" Meter	464.00	464.00
27	4" Meter	725.00	725.00
28	6" Meter	1,450.00	1,450.00

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Company Staff

COMMODITY CHARGE PER 1,000 GALLONS:

5/8 x 3/4" Meter		
From 0 to 5,000 Gallons	\$3.30	
From 5,001 to 10,000	4.25	
In excess of 10,000	4.90	
From 0 to 4,000 Gallons		\$3.30
From 4,001 to 7,000		4.25
In excess of 7,000		4.90

All other meter sizes except irrigation

From to 0 to 25,000 Gallons	\$4.25	\$4.25
In excess of 25,000	4.90	4.90

Irrigation

From 0 to 50,000 Gallons	\$4.25	\$4.25
In excess of 50,000	4.90	4.90

Commercial, industrial, irrigation and multi-family customers use AWWA capacity factor based on their respective meter size for determining how the tiers are applied Included See Note 1, below

Note 1: The Company included this statement in the proposed tariff. Staff recommends that it not be included in the tariff as being too vague.

<u>Standpipe or bulk water per 1,000 gallons</u>	\$3.90	\$4.90
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SERVICE LINE AND METER INSTALLATION CHARGES

5/8" x 3/4" Meter	\$400.00	\$400.00
3/4" Meter	440.00	440.00
1" Meter	500.00	500.00
1 1/2" Meter	715.00	715.00
2" Meter (turbo)	1,170.00	1,170.00
2" Meter (compound)	1,700.00	1,700.00
3" Meter (turbo)	1,585.00	1,585.00
3" Meter (compound)	2,190.00	2,190.00
4" Meter (turbo)	2,540.00	2,540.00
4" Meter (compound)	3,215.00	3,215.00
6" Meter (turbo)	4,815.00	4,815.00
6" Meter (compound)	6,270.00	6,270.00

SERVICE CHARGES:

1			
2	Establishment	\$25.00	\$25.00
3	Establishment of Service(After Hours)	50.00	50.00
4	Re-establishment of Service(Within 12 Months)	**	**
5	Reconnection	30.00	30.00
6	Charge for moving meter at customer request	Cost	Cost
7	After hours service charge, per hour	50.00	50.00
8	Deposit	*	*
9	Meter reread	15.00	15.00
10	Charge for NSF Check	25.00	25.00
11	Late Payment charge	1.50	***
12	Deferred Payment Finance Charge	1.50	****
13	Main Extension and additional facilities	Cost	n/a
14	agreements		
15	All revenue related taxes would be charged to		
16	customers		

* Per Commission rule A.A.C. R14-2-403(B).

** Months off system times the monthly minimum per Commission rule A.A.C. R14-2-403(D).

*** 1.50% of unpaid monthly balance per month.

**** Per Commission Rules A.A.C. 414-2-409(B).

17. A Curtailment Plan Tariff ("CPT") is an effective tool to allow a water company to manage its resources during periods of shortages due to pump breakdowns, droughts, or other unforeseeable events. Red Rock has a CPT for its existing service area and anticipates using a similar CPT that generally conforms to the sample tariff found on the Commission's website.

18. The Company's initial application indicated that the General Manager of Red Rock was Richard Williamson. Staff voiced concerns over Mr. Williamson maintaining that position given that the Commission had previous difficulties with other utilities under his control.³

19. On September 4, 2007, Red Rock amended its Application to note that Mr. Mark Weinberg had been appointed as its new General Manager. Mr. Weinberg has had prior experience managing water companies in Arizona.

20. Although the Company removed Mr. Williamson as General Manager, Staff

³ See Decision Nos. 60902 (May 22, 1998); 61149 (October 7, 1998); 61892 (August 7, 1999); 62949 (October 10, 2000); and Docket No. W-03672A-01-0474.

1 recommends that the Company file an affidavit signed by all members of Red Rock averring that Mr.
2 Williamson did not perform any services, was not and is not employed or in any way affiliated with
3 Red Rock. Staff did not indicate a time frame for the filing of such an affidavit.

4 21. The Company had not been aware of Mr. Williamson's history with the Commission
5 and has agreed that Mr. Williamson will not perform services for, or be affiliated with, Red Rock. At
6 hearing, Staff recommended that because Mr. Williamson did, in fact, work for Red Rock in 2007,
7 that the first affidavit should be filed not later than January 15, 2009, for the year 2008.

8 22. Pursuant to the Commission's rules, Red Rock provided five-year projections for plant
9 values, operating revenues and expenses, and number of customers. Such projections are necessary to
10 establish rates for new companies due to the lack of historical data. Staff reviewed Red Rock's
11 projections and recommends that the Commission find Red Rock's fair value rate base to be
12 \$6,813,369. We concur with Staff's recommendation and find that Red Rock's initial fair value rate
13 base shall be \$6,813,369.
14

15 23. Based on the entirety of its review, Staff further recommends that the Commission
16 grant Red Rock's application for a CC&N to provide water services, subject to the following
17 additional conditions:
18

- 19 a. That the Commission require Red Rock to file within one year of the effective date
20 of this Order a copy of the franchise agreement, also known as a public utilities
license agreement, between Red Rock and Pima County;
- 21 b. That the Commission authorize Red Rock to charge the rates and charges proposed
22 by Staff on Schedule CRM-W-5, attached to the Staff Report (as set forth above);
- 23 c. That the Commission require Red Rock to file within 24 months of the effective
24 date of this Decision a copy of the "Approval to Construct" for Phase I issued by
the ADEQ;
- 25 d. That the Commission require Red Rock to notify the Commission within 15 days
26 of providing service to its first permanent customer;
- 27 e. That the Commission require Red Rock to file a rate application no later than three
28 months following the fifth anniversary of the date the Company begins providing
service to its first customer;
- f. That the Commission require Red Rock to maintain its books and records in
accordance with the NARUC Uniform System of Accounts for water utilities and
maintain separate books and records for the Verano Community;

- g. That the Commission require Red Rock to use the depreciation rates by individual NARUC category, as set forth in Schedule CRM-W-3, attached to the Staff Report.
- h. That the Commission require Red Rock to collect from its customers a proportionate share of any privilege, sales or use tax.

24. The Company states that it does not plan on building any golf courses or lakes within the project. Red Rock should be required to conserve groundwater and should be prohibited from selling groundwater for the purpose of irrigating any future golf courses within the certificated expansion area, as well as any ornamental lakes or water features located in the common areas of the proposed new development within the expansion area.

25. Staff further recommends that the Commission's Decision granting the requested Certificate for Red Rock be considered null and void without further order from the Commission if the Company fails to comply with any of the above-described conditions, and within the specified time frames, unless the Commission grants an extension of time for compliance with those requirements.

26. Staff's recommendations, as described above, are reasonable and should be adopted.

CONCLUSIONS OF LAW

1. Red Rock is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§40-281 and 40-282.

2. The Commission has jurisdiction over Red Rock and the subject matter of the application.

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

4. There is a public need and necessity for water service in the proposed service area as set forth in Exhibit A attached hereto.

5. Red Rock is a fit and proper entity to receive a Certificate to provide water service in the proposed service area as set forth in Exhibit A attached hereto.

6. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the application of Red Rock Utilities, LLC, for a new Certificate of Convenience and Necessity to provide water service to the area in Pima County, Arizona, as described in Exhibit A hereto, is approved subject to the conditions, recommendations and requirements recommended by Staff, as set forth in Findings of Fact Nos. 21, 22 and 23.

IT IS FURTHER ORDERED that Red Rock Utilities, LLC, shall charge initial rates and charges in accordance with Staff's recommendations, as set forth herein.

IT IS FURTHER ORDERED that in light of the on-going drought conditions in Arizona and the need to conserve groundwater, Red Rock Utilities, LLC, is prohibited from selling groundwater for the purpose of irrigating any future golf courses within the certificated expansion area, as well as any ornamental lakes or water features located in the common areas of the proposed new development within the expansion area.

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1 IT IS FURTHER ORDERED that failure by Red Rock Utilities, LLC, to comply with Staff's
2 recommendations, within the specified time frames set forth above, will render the Certificate null
3 and void without further action of the Commission unless the Commission grants an extension of
4 time for compliance with those requirements.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7
8
9 CHAIRMAN COMMISSIONER COMMISSIONER

10
11 COMMISSIONER COMMISSIONER

12 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
13 Executive Secretary 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.

16 DEAN S. MILLER
17 INTERIM EXECUTIVE SECRETARY

18 DISSENT _____

19 DISSENT _____

1 SERVICE LIST FOR: RED ROCK UTILITIES, LLC

2 DOCKET NO. WS-04245A-07-0363

3
4 Mark Weinberg
5 General Manager
6 RED ROCK UTILITIES, LLC
7 2200 East River Road, Suite 115
8 Tucson, Arizona 85718

9 Lawrence V. Robertson, Jr., Esq.
10 P.O. Box 1448
11 Tubac, Arizona 85646
12 Attorney for Red Rock Utilities, LLC

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

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

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EXHIBIT A

PARCEL DESCRIPTION

Description of that parcel of land located in Sections 10, 12, 13, 14 and 15, Township 18 South, Range 14 East, Gila and Salt River Meridian, Pima County Arizona, being more particularly described as follows;

BEGINNING at a found 2" Brass Capped Survey Monument at the Northeast corner of said Section 12;

Thence South 00°11'08" East, along the East line of the Northeast quarter of said Section 12, a distance of 300.01 feet;

Thence leaving said East line, South 89°26'24" West a distance of 115.00 feet;

Thence South 00°11'08" East a distance of 189.39 feet;

Thence North 89°26'24" East a distance of 115.00 feet to a point on the East line of the Northeast quarter of said Section 12;

Thence South 00°11'08" East, along said East line, a distance of 2144.73 feet to the East Quarter Corner of said Section 12, being marked with a found 1/2" rebar with no tag;

Thence South 00°01'03" West, along the East line of the Southeast quarter of said Section 12, a distance of 2657.56 feet to the Southeast Quarter of said Section 12, being marked with a found 1-1/2" aluminum capped pin stamped LS 4785;

Thence South 00°13'51" East, along the East line of the northeast quarter of said Section 13, a distance of 2640.34 feet to the East quarter corner of said Section 13, being marked with a found 1-1/2" aluminum capped pin stamped PLS 21765;

Thence South 00°03'13" West, along the East line of the Southeast quarter of said Section 13, a distance of 2651.46 feet to the Southeast corner of said Section 13, being marked with a found 2" Brass Capped Survey Monument;

Thence South 89°21'52" West, along the South line of said Section 13, a distance of 5291.19 feet to the Southwest corner of said Section 13, being marked with a found 2" Brass Capped Survey Monument stamped LS 1144;

Thence South 89°29'25" West, along the South line of said Section 14, a distance of 5292.50 feet to the Southwest corner of said Section 14, being marked with a found 2" Brass Capped Survey Monument stamped LS 1144;

Thence North 89°39'13" West, along the South line of said Section 15, a distance of 5291.67 feet to the Southwest corner of said Section 15, being marked with a found 2" Brass Capped Survey Monument stamped PCHD;

Thence North 00°25'16" West, along the West line of said Section 15, a distance of 5258.16 feet to the Northwest corner of said Section 15, being marked with a found 1-1/2" aluminum capped pin stamped LS 4785;

Thence North 00°17'33" East, along the West line of the Southwest quarter of said Section 10, a distance of 2629.18 feet to the West quarter corner of said Section 10, being marked with a found 1-1/2" aluminum capped pin stamped LS 4785;

Thence North 00°16'53" East, along the East line of the Northwest quarter of said Section 10 a distance of 2629.63 feet to the Northwest corner of said Section 10, being marked with a found 1-1/2" lead capped pin stamped PE 1322;

Thence North 89°37'26" East, along the North line of said Section 10, a distance of 2649.30 feet to the North quarter corner of said Section 10, being marked with a found 1-1/2" aluminum capped pin stamped LS 4785;

Thence North 89°37'12" East, along the Northeast quarter of said Section 10, a distance of 2573.72 feet to a point on the west Right of Way of Swan Road;

Thence South 00°14'04" West, along said West Right of Way, being 75 feet West of and parallel with the East line of the Northeast quarter of said Section 10, a distance of 2645.62 feet;

Thence South 00°13'55" West, continue along said West Right of Way, being 75 feet West of and parallel with the East line of the Southeast quarter of said Section 10, a distance of 2645.75 feet;

Thence leaving said Right of Way, North 89°58'45" East a distance of 75.00 feet to the Southeast corner of said Section 10, being marked with a 1/2" rebar with no tag;

Thence North 89°27'14" East, along the North line of the Northwest quarter of said Section 14, a distance of 2652.12 feet to the north quarter corner of said section 14, being marked with a 1/2" rebar with tag stamped LS 13178;

Thence North 89°27'22" East, along the North line of the Northeast quarter of said section 14, a distance of 2652.03 feet to the Northeast corner of said Section 14, being marked with a found 1-1/2" aluminum capped pin stamped LS 4785;

Thence North 00°04'12" East, along the West line of the Southwest quarter of said Section 12, a distance of 2647.60 feet to the West quarter corner of said Section 12, being marked with a found 1-1/2" aluminum capped pin stamped LS 4785;

Thence North 00°04'17" East, along the West line of the Northwest quarter of said Section 12, a distance of 2647.62 feet to the Northwest corner of said Section 12, being marked with a found 2" Brass capped survey monument stamped LS 4527;

Thence North 89°26'27" East, along the North line of the Northwest quarter of said Section 12, a distance of 2642.33 feet to the North quarter corner of said Section 12, being marked with a found 2" Brass capped survey monument;

Thence North 89°26'24" East, along the North line of the Northeast quarter of said Section 12, a distance of 2642.29 feet to the POINT OF BEGINNING.

Said parcel contains 139,598,222 square feet or 3204.76 acres of land, more or less.