

OPEN MEETING ITEM  
ORIGINAL



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



Executive Director

ARIZONA CORPORATION COMMISSION

DATE: JANUARY 24, 2008

DOCKET NO: W-02169A-07-0098

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:

KEATON DEVELOPMENT COMPANY  
(CC&N EXTENSION)

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:

FEBRUARY 4, 2008

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:

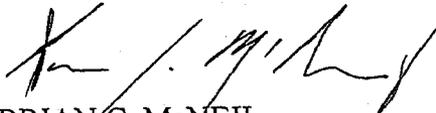
FEBRUARY 12, 2008 and FEBRUARY 13, 2008

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.

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EXECUTIVE DIRECTOR

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

IN THE MATTER OF THE OF THE  
APPLICATION OF KEATON DEVELOPMENT  
COMPANY FOR AN EXTENSION OF ITS  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY FOR THE PROVISION OF  
WATER SERVICE IN PORTIONS OF LA PAZ  
COUNTY, ARIZONA.

DOCKET NO. W-02169A-07-0098

DECISION NO: \_\_\_\_\_

OPINION AND ORDER

DATE OF HEARING: November 30, 2007  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
APPEARANCES: Mr. Richard L. Sallquist, Sallquist Drummond & O'Connor, P.C. on behalf of Keaton Development Company; and  
Ms. Robin Mitchell, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On February 13, 2007, Keaton Development Company ("Applicant" or "Company") filed an application for an extension of its existing Certificate of Convenience and Necessity ("Certificate") with the Arizona Corporation Commission ("Commission") to provide public water service in various parts of La Paz County, Arizona.

On March 9, 2007, the Commission's Utilities Division ("Staff") issued a Notice of Insufficiency which indicated that the Company's application had not met the sufficiency requirements of A.A.C. R14-2-411(C).

On September 28, 2007, Staff issued a Notice of Sufficiency to the Company.

On October 4, 2007, by Procedural Order, the above-captioned matter was scheduled for

1 hearing on November 30, 2007, and Applicant was ordered to publish notice of the application and  
2 hearing thereon.

3 On November 2, 2007, Staff filed its initial report which recommended denial of the  
4 Company's application.

5 On November 9, 2007, the Company filed notice that it had provided public notice pursuant to  
6 the terms of the Commission's Procedural Order, and also filed objections to the Staff Report.

7 On November 30, 2007, a full public hearing was convened before a duly authorized  
8 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Company and  
9 Staff appeared with counsel. At the conclusion of the hearing, the matter was taken under  
10 advisement pending submission of a Recommended Opinion and Order to the Commission.<sup>1</sup>

11 On December 7, 2007, Staff filed an amended Staff Report which recommends that the  
12 Commission issue an Order Preliminary to the Company for the area for which it is requesting an  
13 extension of its Certificate.

14 \* \* \* \* \*

15 Having considered the entire record herein and being fully advised in the premises, the  
16 Commission finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. Pursuant to authority granted by the Commission, the Company is an Arizona  
19 corporation engaged in the business of providing public water service in the vicinity of Salome, La  
20 Paz County, Arizona pursuant to Decision No. 41705 (November 12, 1971).

21 2. On February 13, 2007, the Company filed an application for an extension of its  
22 existing Certificate in order to provide water service to an area which is marked Exhibit A, attached  
23 hereto and incorporated herein by reference.

24 3. Public notice of the application was provided in accordance with the law.

25 4. With its application, the Company is seeking an extension of its Certificate to provide  
26

27 <sup>1</sup> At the conclusion of the hearing, the presiding Administrative Law Judge directed Staff to file an amended Staff Report  
28 due to changes made when Staff testified at the hearing. One of the included changes is that the Commission approve the  
Company's request for an extension with an Order Preliminary.

1 public water service to approximately 72 acres of land which are being developed as residential  
2 subdivisions, Sunshine Acres, a 37 acre parcel being developed as a 107 lot subdivision, and Salome  
3 Heights, a 35 acre parcel which is being developed as a 29 lot subdivision.

4 5. The two subdivisions are owned by the same owners and are adjacent to one another,  
5 approximately one-half mile east of the Company's existing certificated service area.

6 6. At present, the Applicant is providing public water service to approximately 475  
7 customers.

8 7. According to the Staff Report, the Company has two active wells which produce  
9 approximately 760 gallons per minute ("GPM") of water, and one inactive well which has a  
10 production capacity of approximately 383 GPM and will be brought on line to serve the extension  
11 area described in Exhibit A.

12 8. The developers will fund the cost of the transmission facilities for the Company with  
13 advances in aid of construction totaling approximately \$264,500 through main extension agreements  
14 which are approved by the Commission.

15 9. Concurrently with its application, the Company submitted an Approval to Construct  
16 ("ATC") which was issued by the Arizona Department of Environmental Quality ("ADEQ") for the  
17 water facilities to serve the Sunshine Acres subdivision. During the hearing, the Company indicated  
18 that it will file a copy of the Salome Heights subdivision's ATC upon receipt from ADEQ.

19 10. The Company, in conjunction with its application, on October 31, 2007, filed a  
20 Curtailment Tariff with the Commission for its approval.

21 11. Applicant further indicates that it will file a copy of a Letter of Adequate Water  
22 Supply ("LAWS") which is to be issued from the Arizona Department of Water Resources  
23 ("ADWR") which will demonstrate the availability of adequate water to serve the extension area  
24 upon its receipt from the state agency.

25 12. On November 2, 2007, Staff filed its report which initially recommended the denial of  
26 the Company's application based on an ADEQ report which indicated that ADEQ was unable to  
27 determine whether the system was delivering water which met the requirements of the Safe Drinking  
28

1 Water Act. However, on November 9, 2007, ADEQ issued a current status report to the Company  
2 which indicates that it has no major deficiencies and is delivering water which meets the  
3 requirements of the Safe Drinking Water Act. Upon the Company's receipt of the current ADEQ  
4 status report, a copy was filed with the Commission.

5 13. During the hearing, based on the current ADEQ status report, Staff revised its original  
6 recommendation and is now recommending that the Commission issue the Applicant an Order  
7 Preliminary for the extension of its Certificate for the area described in Exhibit A.

8 14. On December 7, 2007, pursuant to the presiding Administrative Law Judge's request  
9 during the hearing, Staff filed an amended Staff Report which set forth its recommendation that the  
10 Commission approve the issuance of an Order Preliminary to the Company along with several other  
11 recommendations.

12 15. According to the Staff Report, the Company has no compliance issues with the  
13 Commission and the Company is delivering water with no more than five parts per billion ("ppb") of  
14 arsenic, which is in compliance with the new arsenic standard established by the U.S. Environmental  
15 Protection Agency. The Company is also current on the payment of its sales and property taxes.

16 16. Staff is recommending that the Commission approve an Order Preliminary be issued  
17 to the Company for the extension area subject to the following conditions:

- 18
- 19 • that the Company be required to charge its authorized rates and charges in the extension  
20 area;
  - 21 • that the Company file, within three years of the effective date of this Decision, with the  
22 Commission's Docket Control, as a compliance item in this docket, a copy of a franchise  
23 agreement issued from La Paz County for the requested extension area;
  - 24 • that the Company file, within three years of the effective date of this Decision, with the  
25 Commission's Docket Control, as a compliance item in this docket, a copy of the ATC for  
26 Salome Heights which is to be issued by ADEQ;
  - 27 • that the Company file, within three years of the effective date of this Decision, with the  
28 Commission's Docket Control, as a compliance item in this docket, a copy of the Letter of  
Adequate Water Supply which is to be issued by ADWR which demonstrates the  
availability of adequate water for the Sunshine Acres and Salome Heights subdivisions;  
and
  - that the Company upon complying with the second, third, and fourth conditions above,  
make a compliance filing, and within sixty days of this filing, Staff shall file a response in  
the form of an Order to be placed on the Commission's agenda for a vote to approve a  
Certificate as soon as possible after Staff's filing that confirms the Company's compliance  
with the second, third and fourth conditions listed above.

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17. Staff further recommends approval of the Curtailment Tariff filed by the Applicant.

18. Because an allowance for the property tax expense of the Company is included in the Company's rates and will be collected from its customers, the Commission seeks assurances from the Company that any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the Commission's attention that a number of utilities have been unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as many as twenty years. It is reasonable, therefore, that as a preventive measure, the Company should annually file, as part of its Annual Report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

19. We find that Staff's recommendations, as set forth in Findings of Fact Nos. 16 and 17 are reasonable and should be adopted.

**CONCLUSIONS OF LAW**

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282, and 40-252.

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

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

4. There is a public need and necessity for water utility service in the proposed service area described in Exhibit A.

5. The Company is a fit and proper entity to receive an Order Preliminary prior to the issuance of a Certificate.

6. The application by the Company to extend its Certificate for the area described in Exhibit A should be granted for an Order Preliminary as recommended by Staff in Findings of Fact No. 16.

7. The Curtailment Tariff filed by the Company should be approved.

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**ORDER**

IT IS THEREFORE ORDERED that the application of Keaton Development Company for an amendment to its Certificate of Convenience and Necessity for the operation of water utility in the area more fully described in Exhibit A is hereby approved for an Order Preliminary provided that Keaton Development Company complies with the conditions set forth in Findings of Fact No. 16.

IT IS FURTHER ORDERED that upon Keaton Development Company satisfying the second, third and fourth conditions of Findings of Fact No. 16, it shall file a Notice of Compliance and within sixty days of this filing, Staff shall file a response in the form of a Commission Order to be placed on the Commission's agenda to approve a Certificate of Convenience and Necessity upon Staff's confirmation that Keaton Development Company has complied with the conditions set forth in Findings of Fact No. 16 above.

IT IS FURTHER ORDERED that the Curtailment Tariff filed by Keaton Development Company is hereby approved.

IT IS FURTHER ORDERED that Keaton Development Company shall charge water customers in the areas more fully described in Exhibit A its tariffed rates and charges as authorized previously by the Commission

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IT IS FURTHER ORDERED that Keaton Development Company shall annually file, as part of its Annual Report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

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

BY 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 the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
DEAN S. MILLER  
INTERIM EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

MES:db

1 SERVICE LIST FOR: KEATON DEVELOPMENT COMPANY

2 DOCKET NO.: W-02169A-07-0098

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