

ORIGINAL
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

22

DATE: FEBRUARY 26, 2008

DOCKET NO: W-01395A-07-0556

TO ALL PARTIES:

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

QUEEN CREEK WATER COMPANY
(SALE OF ASSETS AND CONDITIONAL CANCELLATION 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:

MARCH 6, 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:

MARCH 11, 2008 AND MARCH 12, 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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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 QUEEN CREEK WATER COMPANY FOR
10 APPROVAL OF SALE OF ASSETS AND
11 CONDITIONAL CANCELLATION OF ITS
12 CERTIFICATE OF CONVENIENCE AND
13 NECESSITY.

DOCKET NO. W-01395A-07-0556

DECISION NO. _____

OPINION AND ORDER

14 DATE OF HEARING: February 4, 2008
15 PLACE OF HEARING: Phoenix, Arizona
16 ADMINISTRATIVE LAW JUDGE: Belinda A. Martin
17 APPEARANCES: Stanley B. Lutz and Steven H. Hirsch, Bryan Cave,
18 LLP, on behalf of Queen Creek Water Company;
19 Marlene Pontrelli and Peter A. Winkler, Mariscal Weeks
20 McIntyre & Friedlander, PC, on behalf of the Town of
21 Queen Creek; and
22 Kevin Torrey, Staff Attorney, Legal Division, on behalf
23 of the Utilities Division of the Arizona Corporation
24 Commission.

25 **BY THE COMMISSION:**

26 On September 28, 2007, Queen Creek Water Company ("QCWC" or "Company"), filed with
27 the Arizona Corporation Commission ("Commission") an application for the sale of assets to the
28 Town of Queen Creek and conditional cancellation of its existing Certificate of Convenience and
Necessity ("Application").

QCWC is an Arizona public service corporation engaged in the business of providing water
utility service to the public in Maricopa and Pinal Counties, Arizona. QCWC operates a system
serving approximately 9,224 connections.

The Commission's Utilities Division Staff ("Staff") issued a sufficiency letter on December
13, 2007, deeming the Application administratively complete pursuant to Arizona Administrative

1 Code ("A.A.C.") R14-2-411(C) and A.R.S. § 41-1074 (C), and Procedural Orders were issued setting
2 a hearing for February 4, 2008.

3 QCWC provided its customers with notification of the Application by U.S. Mail and by
4 publication in *The Tribune* on October 31, 2007, and caused notice of the hearing to be published in
5 *The Tribune* on January 7, 2008. No requests for intervention were filed, but two customer comment
6 letters were filed with the Commission.

7 On January 18, 2008, Staff filed a Staff Report on the Application recommending
8 Commission approval.

9 A hearing was held as scheduled on the Application on February 4, 2008. Staff appeared and
10 testified in support of the Application and the recommendations in the Staff Report. No members of
11 the public appeared at the hearing.

12 * * * * *

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

15 **FINDINGS OF FACT**

16 1. QCWC is an Arizona corporation engaged in the business of providing water utility
17 service to the public in vicinity of the Town of Queen Creek ("Town") in Maricopa and Pinal
18 Counties, Arizona. The Commission originally granted authority to QCWC to provide water utility
19 service in the territory served by QCWC in Commission Decision No. 46132 (June 4, 1975).

20 2. QCWC's approximately 36.5 square mile service area is located within and without
21 the Town's boundaries and currently services 9,224 connections.

22 3. On September 28, 2007, QCWC filed an application requesting Commission authority
23 to sell its assets to the Town and requesting that the Commission cancel its Certificate of
24 Convenience and Necessity ("CC&N").

25 4. Staff issued a sufficiency letter on December 13, 2007, deeming the Application
26 administratively complete pursuant to A.A.C. R14-2-411(C) and A.R.S. § 41-1074 (C), and
27 Procedural Orders were issued setting a hearing for February 4, 2008.

28 5. QCWC provided its customers with notification of the Application by U.S. Mail and

1 by publication in *The Tribune* on October 31, 2007, and caused notice of the hearing to be published
2 in *The Tribune* on January 7, 2008.

3 6. No requests for intervention were filed, but two customer comment letters opposing
4 the sale were filed with the Commission.

5 7. Staff filed its Staff Report on this matter on January 18, 2008, recommending approval
6 of the transfer of QCWC's assets to the Town and approval of the cancellation of QCWC's CC&N.

7 8. According to the Application, approval for the sale of the Company is being sought in
8 lieu of the Town's acquisition of QCWC through condemnation proceedings. The Town passed a
9 resolution on October 4, 2007, authorizing acquisition of QCWC through either a condemnation
10 action or a purchase agreement. The parties agreed to proceed with a purchase of the Company to
11 avoid the time and expense of a condemnation action, which, according to the Town, ultimately
12 would have an adverse economic impact to water customers.

13 9. QCWC's water system is comprised of 11 wells producing approximately 11,850
14 gallons per minute, 7 storage tanks with a combined capacity of 4,370,000 gallons, and the necessary
15 infrastructure to serve its customers. Staff stated that the Company's wells have adequate well
16 production and storage capacity to serve the existing connections.

17 10. The Town currently provides wastewater service to the area. The transfer of assets to
18 the Town and cancellation of the Company's CC&N will have the effect of combining water and
19 wastewater service under one provider.

20 11. On December 5, 2007, QCWC and the Town entered into a purchase agreement
21 ("Purchase Agreement") whereby the Town will purchase the water utility assets of QCWC.

22 12. The close of escrow is conditioned upon the Commission's cancellation of QCWC's
23 CC&N.

24 13. The purchase price is \$4,000 per connection, with a cap on the price of \$38,500,000.
25 As of December 15, 2007, the Company had 9,224 connections.

26 14. The Town will assume all of QCWC's obligations under any existing main extension
27 agreements and the Company will provide the Town with \$850,000 at close of escrow to fund
28 repayment obligations under existing main extension agreements for two years. Any repayments due

1 under main extension agreements after that point will be the responsibility of the Town.

2 15. The Town will assume all existing customer accounts, including customer deposits,
3 and avers that it will continue to honor the existing QCWC terms regarding refunds and credits.

4 16. The Town indicated during its testimony that it understood its obligation to serve
5 water to the customers, both within and without the Town's boundaries, on a non-discriminatory
6 basis to all existing customers as required of it as a political subdivision of the State pursuant to the
7 Arizona Constitution, Article 1, Section 13.

8 17. The Town will obtain a loan from the Water Infrastructure Financing Authority of
9 Arizona in the amount of \$40,000,000 ("WIFA Loan"), the proceeds of which will be used by the
10 Town to acquire QCWC. Close of escrow on the WIFA Loan will not occur until the Commission's
11 approval of the Application.

12 18. The Town is retaining the majority of QCWC employees, who will become Town
13 employees.

14 19. After the close of escrow, the Town will establish a separate Utilities Department to
15 oversee both water and wastewater service to its customers. The Town has in place procedures to
16 handle customer complaints in an efficient and timely manner. Initially, the Town will be assuming
17 the office space currently leased by QCWC, where customers may continue to pay their bills.

18 20. Upon acquisition of the Company, the Town plans to increase rates over a span of
19 three years. According to the Town, the average current rate of \$23.70 would gradually increase to
20 \$34.29, or a 45 percent increase. The Town arrived at the rates after hiring a national consulting firm,
21 which made recommendations regarding rates to be charged by the Town.

22 21. Staff notes that the Company has no compliance issues with the Commission.

23 22. Maricopa County Environmental Services Department, as a formally delegated agent
24 of the Arizona Department of Environmental Quality reported that QCWC (Public Water System ID
25 No. 07-033) is currently delivering water that meets State and Federal drinking water quality
26 standards required by A.A.C., Title 18, Chapter 4.

27 23. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic
28 maximum contaminant level ("MCL") in drinking water from 50 micrograms per liter ("µg/l") to 10

1 µg/l. The date for compliance with the new MCL was January 23, 2006.

2 24. According to information provided by the Company, current arsenic concentrations
3 are approximately two to six parts per billion.

4 25. QCWC is located within the Phoenix Area Active Management Area ("AMA"). The
5 Arizona Department of Water Resources reported that the Company is in compliance with its
6 monitoring and reporting requirements.

7 26. Staff notes that the Town has experience owning and operating a municipal
8 wastewater utility and will retain almost all the Company's employees in order to ensure that
9 consistent water service will continue uninterrupted to QCWC's customers.

10 27. The Company, Town and Staff agree that the Town is willing and able to become the
11 sole water utility service provider in the area currently served under the CC&N, that avoiding a
12 condemnation proceeding is in the best interests of QCWC's customers, and combining water and
13 wastewater service in one provider is in the public interest.

14 28. The Company provided to Staff a copy of the notice mailed to its customers and
15 printed in *The Tribune* in October, 2007. The initial notice advised customers that any claims against
16 QCWC, including claims for refunds of security deposits, service line and meter installation or
17 mainline extension agreements, needed to be made to QCWC on or before November 21, 2007. The
18 Purchase Agreement provides that the Town will be responsible for all QCWC's liabilities with
19 respect to customer deposits, mainline extensions, and other liabilities and obligations.

20 29. Staff recommends approval of the Application on the condition that the Town honors
21 all liabilities of QCWC relating to customer deposits, service line and meter installations, and main
22 line extension agreements, but without any arbitrary timeframe for submission of claims such as that
23 stated in its October, 2007 notice. In this regard, the Town has amply demonstrated its intentions to
24 assume and honor all QCWC's obligations under mainline extension agreements and all existing
25 customer accounts, including customer deposit obligations.

26 30. Further, Staff recommends approval of the Application upon the condition that QCWC
27 file documentation of the close of escrow finalizing the sale and transfer of the Company's assets to
28 the Town.

1 31. Staff's recommendations in Findings of Fact Nos. 29 and 30 are reasonable.

2 32. Based upon the testimony and evidence indicating that the Town understood its
3 obligation to provide service to the water customers both within and without the Town's boundaries
4 on a non-discriminatory basis and that it will assume all existing customer accounts and obligations
5 under existing main extension agreements, we find that it is in the public interest to approve the
6 Application.

7 **CONCLUSIONS OF LAW**

8 1. Queen Creek Water Company is a public service corporation within the meaning of
9 Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

10 2. The Commission has jurisdiction over Queen Creek Water Company and the subject
11 matter of the Application.

12 3. Notice of the Application was provided as required by law.

13 4. There is a continuing need for water utility service in Queen Creek Water Company's
14 currently certificated area.

15 5. The Town of Queen Creek is a fit and proper entity that is ready, willing and able to
16 assume the responsibility of providing water utility service within Queen Creek Water Company's
17 currently certificated area.

18 6. Staff's recommendations in Findings of Fact Nos. 29 and 30 should be adopted.

19 **ORDER**

20 IT IS THEREFORE ORDERED that the application of Queen Creek Water Company to sell
21 its assets to the Town of Queen Creek and to cancel its Certificate of Convenience and Necessity is
22 hereby approved, and that the cancellation will be effective upon the closing of the sale and transfer
23 of its assets to the Town of Queen Creek.

24 IT IS FURTHER ORDERED that Queen Creek Water Company shall notify the Commission
25 by a compliance filing in this docket within fifteen days of the closing of the sale and transfer of
26 assets to the Town of Queen Creek.

27 ...

28 ...

1 IT IS FURTHER ORDERED that our approval of this Application is based upon the Town of
2 Queen Creek's commitment to honor all liabilities of Queen Creek Water Company relating to
3 customer deposits, service line and meter installations, and main extension agreements.

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 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
12 Executive Director of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____, 2008.

16 _____
17 DEAN S. MILLER
18 INTERIM EXECUTIVE DIRECTOR

19 DISSENT _____

20
21 DISSENT _____
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1 SERVICE LIST FOR: QUEEN CREEK WATER COMPANY

2 DOCKET NO.: W-01395A-07-0556

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