

ORIGINAL



0000089001

Re: In the matter of the application of Pine Water Company for approval to (1) Encumber a part of its plant and system A.R.S. 40-285(A); and (2) Issue Evidence of Indebtedness Pursuant to A.R.S. 40-302(A) Docket #W-03512A-07-0362

RECEIVED Arizona Corporation Commission DOCKETED

2008 SEP 29 P 4: 58

SEP 29 2008

Honorable Commissioner Kristin Mayes:

My name is Dina Galassini and I own property in Strawberry. I want to thank you for coming to our community to listen to our concerns about the K2 well. I know you were ill at the last hearing, but were you able to listen in?

MM

The K2 site is owned by SWCo and is within the certificate of convenience & necessity of SWCo.

At the Oct. 26 hearing, I spoke about Brooke Utility's intentions to transfer some of SWCo's land to PWCo to drill the K2 well. On page 4 of the application it reads:

SWCo has informed the Parties that a portion of the K2 Site approximating 30 x 30 foot is NOT NECESSARY OR USEFUL IN THE PERFORMANCE OF SWCo's duties to the public.

I was confused by Chairman Gleason's response that this issue is an "after affect" of the application. If this land transfer is an "after affect", then why would PWCo include it in the application? And in the Arizona Revised Statutes 40-285-A, it states: [Disposition of plant by public service corporations; acquisition of capital stock of public service corporation by other public service corporations]

A. A public service corporation shall not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant, or system necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor shall such corporation merge such system or any part thereof with any other public service corporation without first having secured from the commission an order authorizing it so to do. Every such disposition, encumbrance or merger made other than in accordance with the order of the commission authorizing it is void.

Whether this application is approved or not, wouldn't Brooke or SWCo need the ACC's approval of the transfer or sell of such land?

Escrow instructions #1.a states the title to the well site for the K2 project has been conveyed to PWCo (from SWCo).

As a resident of Strawberry, I find this property in Strawberry vitally necessary and useful in the performance of its duties to the public. Brooke/SWCo conveyed title of its land to PWCo without prior approval of the ACC. Therefore is in violation of A.R.S. 40-285-A.

DINA GALASSINI

9-2308

dinarose@cox.net

As a private citizen and property owner in Strawberry, I am a customer of Strawberry Water Co. ("SWCo"), I wish to bring to your attention a series of actions that appear to directly violate the requirements and the spirit of the Corporation Commission's rules related to this case.

K2 well too close in proximity to SWCo's existing wells in Strawberry.  
- primary use of water is for Pine; not both  
- no safety measures to protect existing wells

Under the administrative rules of the ACC, PWCo as a public service corporation is required to seek your approval (1) to incur debt, and (2) to encumber any of its property, plant, and equipment. The *Well Development Agreement* (Agreement) between PWCo and the Pine/Strawberry Water Improvement District ("PSWID" or "District") dated 5-1-07, at Section 4.2.1.1a required such approval of the ACC prior to the parties proceeding with PSWID loaning \$300,000 to PWCo (the "Loan"). This loan is for funding the construction of an exploratory well to be located on a parcel of land in Strawberry known as the K2 site recently acquired by PWCo from its sister company (SWCo). In addition, at Section 4.2.1.5 of the Agreement, PWCo agreed to grant PSWID a security interest in the K2 site where the new well is to be located.

Timeframe would be sooner if Brooke cooperated.

Brooke was given over 10 years to provide water - Did they?

Here is my concern: On January 30, 2008, at a special meeting of the PSWID attended by a PWCo representative, the PSWID and PWCo entered into an escrow instruction ("Escrow") as required in the Agreement that allows for funding of the \$300,000 loan. (NOTE: These escrow instructions can be found at [www.pswid.org](http://www.pswid.org)) **In the Escrow Instructions, Section 1 (a) (v), PWCo and PSWID jointly and directly waived the provisions of the requirements for ACC approval that were contained in the original 5-1-07 Agreement. Instead they agreed to move forward without your approval** (1) to open the Escrow that obligates PWCo to the terms of the Loan, and to have the PSWID funds disbursed by the escrow agent directly to the well driller, material suppliers, hydrologist, etc., that were hired and under contract with PWCo (not under contract with PSWID); and (2) to have PWCo execute a valid signed lien document on the K2 site to PSWID (not the escrow agent) for the District to hold without recording until such time as ACC's future approval is received (this document is out of PWCo's control during that time). In the meantime, the project was started with tree removal, light excavation, and blue staking completed and funds may have already been spent, and debt is being incurred by PWCo.

From the oral explanation given by Mr. Richey (former PSWID Board member and K2 project administrator under the Agreement), **it appears the diversion of funds directly to PWCo's driller/material suppliers was being used to justify that no debt was incurred by PWCo since the funds did not go through PWCo's hands to pay their suppliers.** Since the 5-1-07 Agreement calls for PWCo to engage the driller/suppliers, this methodically planned diversion of funds directly from PWCo to the driller/suppliers (thereby by-passing the PWCo checking account) in no way eliminates the fact the contractor obligations are those of PWCo. A debt of PWCo owed to PSWID is thereby created with this process, which is designed to seemingly skirt the ACC requirements for pre-approval of debt and possibly the Arizona Revised Statutes stating that no taxpayer monies are to be used toward a public utility.

Equally disgusting from the explanation of Mr. Richey, is the fact **he indicated the executed lien document related to the encumbered property is being held by PSWID and not properly recorded as required; thereby PWCo has supposedly not violated the provisions requiring ACC pre-approval of the encumbrance of the property.** Once the executed document is out of the hands of PWCo (the debtor) and placed in the hands of the District (the creditor), PWCo has violated the ACC requirements for pre-approval of issuance of

encumbrances. Not recording the lien does not invalidate the intent or actions of the parties to move forward with the terms of the Agreement without the required approval of the ACC.

The advancement of funds by the District without ACC debt approval, and the advancement of funds without the required lien in place and recorded at Gila County also directly violates the trust the District rate-payers and property owners have placed in the former PSWID Board. This series of actions by both parties appears to be designed to violate both the Commissioners' pre-approval requirements as well as the fiduciary responsibility of the District to protect the funds of its constituents. Keep in that both PWCo and the PSWID desired to establish an escrow for the deposit of the PSWID Funds and to "create a mechanism to govern" the disbursement of PSWID Funds to pay contractors, etc. Throughout the Escrow Instructions one can see a possible co-mingling or diversion of funds between these two parties.

These transactions, in direct violations of the ACC's approval processes, should not be able to proceed legally. Already, approximately \$12,144 of taxpayer funds have disappeared to well drillers, material suppliers, surveyors, excavators, etc. for a project that may be half completed before it is stopped because of non-approvals of the ACC, Gila County Planning, Zoning, and Development (permits not yet obtained). Your legal staff has recommended approval of PWCo's application after they were asked by Commissioner Mayes to rule whether the Loan violates the Arizona Constitution restricting tax money being loaned to a public service corporation. See Article 9, Section 7 of the Arizona Constitution.

Brooke Utility continues to shift blame to others for the Company's lack of reasonable efforts and investment in new water resources and should not be allowed since they have directly violated your pre-approval requirements related to incurrence of debt and encumbrance of property. Also, the Company and the PSWID appear to have jointly and fraudulently schemed to deceive the public as to the appropriateness and financial security of the public funds involved.

Therefore, I respectfully request that you elected Commissioners exercise your authority to invalidate the escrow agreement and not only stop the unapproved PWCo debt that has and is accumulating with the expenditures of PSWID Escrow funds and make PWCo directly responsible for their contractual obligations.

As you are aware of, the PSWID is in the process of condemnation proceedings of PWCo and SWCo. In all due respect, it has taken nearly two years for the Commissioners to rule on the failed constitutionality of this agreement. This decision should be based on our laws and nothing else. The people spoke with their votes and I hope the Commissioners take this in high regard when they take into consideration what is best for the residents of Pine and Strawberry.