

ORIGINAL

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December 16, 2008

The Honorable Jane L. Rodda
Administrative Law Judge
Arizona Corporation Commission
400 W. Congress
Tucson, AZ 85701

Arizona Corporation Commission
DOCKETED

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In the Matter of the Applications by Northern Sunrise Water Company and Southern Sunrise Water Company for a Certificate of Convenience and Necessity to Provide Water Service in Cochise County, Arizona.

Docket Number W-20453A-06-0247 W-20454A-06-0248, W-20453A-06-0251, W-20454A-06-0251, W-01646A-06-0251, W-02235A-06-0251, W-02316A-06-0251, W-02230A-06-0251, W-01629A-06-0251, W-01868A-06-0251, W-02240A-06-0251
Submitted to Commission Docket Control-Original and 17 Copies

Dear Judge Rodda,

In your Procedural Order signed and dated November 10, 2008, you set a Hearing Date of January 15, 2009 to obtain evidence and testimony addressing the above entitled matter. At the Telephonic conference preceding your Order I had indicated that I would be available to participate in a Hearing any time after January 12. That situation has changed. It will now be necessary for me to travel to Denver on January 13 to assist my daughter immediately prior to her units' deployment to the Persian Gulf Region. I will not be returning to Arizona until January 17 at the earliest.

That having been said, it is not my intention nor desire to request that this important hearing be further delayed; I would ask however that my comments and observations concerning this matter be entered into the record, and if applicable my comments, observations and/or opinions be taken into consideration as you and the Commission deliberate and adjudicates this matter. I am of the opinion that sufficient, or perhaps more than sufficient resources have been expended on this matter already, as I am sure that the Applicants, the Court, and the

Commission, not to mention all of the property owners having the potential to be affected by the ultimate decision of the Commission wishes to have this matter brought to fruition.

From the earliest days of this entire process, it seemed to be recognized that largely as a result of the prior conduct of Mr. McLain and his apparent disregard for any rule, regulation, or authority, some number of connections were made by Mr. McLain without regard to whether those connections were within his previously granted certificated area(s). The language of the ROO submitted to the Commissioners for their consideration and their subsequent ruling resulting in Decision Number 68826 (June 29, 2006) acknowledged that fact and allowed Northern and/or Southern Sunrise Water Companies to make a determination of those connections at some appropriate time following those companies having fully acquired ownership of the former McLain assets and then having the opportunity to complete a more detailed analysis. Perhaps, regretfully, there was also language that would allow the companies to include in compliance with that item additional territory that was "reasonable and logical". I am of the opinion that the Applicants applied a much too liberal interpretation to that language when they has requested that their certificated area be expanded by some 4.3 square miles, an expansion amounting to an approximately 58% increase in service territory while avoiding (it was their hope) many of the criteria normally required by an Applicant when requesting a CC&N expansion.

In your Applicant's (or their Parent's) own language, and found on the Web Site of Algonquin Power in May of 2008, a Company Mission Statement says, in part, "...enhancing investor value through stable, sustainable cash distributions generated by sound operational and management practices and the aggressive pursuit of appropriate, accretive growth opportunities." They go on to state relative to their Infrastructure Division, "Infrastructure facilities offer highly predictable cash flows from a CAPTIVE USER BASE (emphasis added) of customers within a regulated utility." They go on to further define their Infrastructure Benefits as: "Highly

predictable cash flows with growth opportunities” and “Regulated utility provides return protection” and concludes with “PERPETUAL GEOGRAPHIC MONOPOLY” (emphasis added). In earlier statements attributed to Mr. Sorensen, and published in the Sierra Vista Herald Newspaper, Mr. Sorensen has opined that the territory expansion request was “not about control, but rather about options.” With all due respect, and with the understanding and belief that Mr. Sorensen agrees completely with the stated Company policy as delineated above, I find his statement somewhat disingenuous and contrary to the stated policy of the Company. Based upon my reading of the Staff report, it seems that Staff was eager to “rein in” that enthusiastic request by the Applicants and have the Commission approve a much smaller area.

I think that one of the factors that will have a determination upon the ultimate resolve of this matter is that of “original intent”. I believe that it is vital to have an understanding of the intent of this Court and the Commission in their original decisions addressing this matter. I would like to believe that this intent was very narrowly defined and would, for all intents and purposes, be strictly limited to those individual connections identified by the companies as lying physically outside of their certificated areas, and those connections only would those to be incorporated within the existing CC&N(s). I further believe that if this very narrow interpretation were adopted, most, if not all of the added incremental costs associated with the requests made by Commissioner Mayes in her letter of November 7, 2008 could be eliminated. And certainly the ultimate cost to the ratepayers must remain of great concern to the Court and the Commission.

Another area of concern for me in this process has been the “numbers”. In the Applicants original documents they indicated that Northern Sunrise Water Company had identified 30 existing customers (approximately 10% of its total customers) and that Southern Sunrise Water Company had identified 41 existing customers (approximately 5% of its total customers) as being outside of their respective certificated boundaries. Curiously absent was any mention of

any of these customers actually being situated within the certificated area of another public utility, specifically East Slope Water Company. It would seem to me that logic and common sense would dictate that the individual companies, Northern Sunrise and/or Southern Sunrise Water Companies, those entities that are "in the trenches" daily would be the best choice to accurately determine what customers of theirs are inside of or outside of those boundaries granted by the Commission. However, reading the Staff's original response dated June 27, 2008, the following statement is made, "There are approximately 189 existing customers/property owners being served outside the existing CC&N. (Within this count, there appear to be approximately 18 customers within the East Slope Water Company CC&N)." This represents a difference in total customers of up to 118 (166% of the Applicants count) and includes the recognition of the additional matter of the customers seemingly within the boundaries of East Slope Water Company. I would certainly hope that this amount of disconnect between the numbers, coupled with the failure of the Applicants to acknowledge the possible existence of customers within the certificated area of the another recognized public utility entity, would be unacceptable to both the Court and the Commission. Regardless of whatever other issues regarding this matter may exist, I find it difficult to imagine that the Court or the Commission can move forward on this matter until this is resolved, and I further believe that a very detailed explanation is in order. In my judgment, this matter only serves to further confuse an already very confused situation.

I am also very concerned about the accumulated costs incurred to date by the Applicants and the effects of these costs ultimately upon the ratepayers. I have not seen any published nor imputed figure of cost, but my sense is that those costs are significant. It is further my sense that it is fully the intent of the Applicants to "recover" those costs as a result of their next rate case application. I believe that it will be very difficult for the Commission Staff to make a complete and accurate evaluation of all of the associated costs of this effort by the Applicants due to the nature of the "affiliate transactions." I am not aware of this Court having addressed the matter of

“affiliate transactions”, but I do note a rather lengthy discussion and criticism written by Administrative Law Judge Nodes in the Gold Canyon matter, a matter before the Commission some months ago also involving these Applicants, not Northern nor Southern Sunrise Water Companies admittedly, but Algonquin Water Resources, the true Applicant in all of these matters. I commend Judge Nodes on his opinion. During an earlier “notification” procedure, the Applicants mailed, by Certified U.S. Mail, at a cost per notification (at least based upon the letter that I received) of \$3.06. As I have been a subscriber of the former McLain Horseshoe Ranch Water Company since 1992, and I would have no reason to believe that the entire Horseshoe Ranch Subdivision was not already within the established certificated area, I obviously should never have received this, or any other, notification. I would have to ask just how much was expended on “incorrect” notifications. And, presuming that amount can be reasonably determined, would that amount be excluded from any cost recovery borne by the ratepayers?

I think that it would also be proper, presuming the inclusion of some number of properties beyond those actually connected to the Applicants system(s), to have a published analysis of the number of privately owned wells, the number of properties and clients on a “well share” agreement of some sort, and finally the number of properties and clients on a “shared well” arrangements. The Applicants and the Commission have gone to some length to assure owners of private wells that they will be unaffected by a decision of the Commission that might include their property within an expanded Northern Sunrise or Southern Sunrise Water Company CC&N. There has been no assurance, however, for the other classes of individuals on a “well share” or “shared well”. Further it would seem that those individuals on a “well share” would potentially be at the greatest risk as the possibility would exist that the Commission might rule that any and/or all “well shares” situate within the expanded certificated areas would constitute a public utility entity, and it is a violation of Commission rules for a public utility entity to exist within the certificated area of another utility. Perhaps, if a significant number of these “well

shares” or “shared wells” exist within the proposed expansion area some provision can be made within the Order or Decision to preserve their rights.

I would like to also include a comment addressing the matter of the “process” itself. I have found it somewhat curious that it is a matter of property owners located within the proposed expansion area having to “opt-out” rather than expressing their consent by “opting-in”. In the matter of the creation of a Water Improvement District, the organizers of the District must present to the Board of Supervisors of the County in which the proposed District would be located valid petitions demonstrating that a minimum of 51% of the property owners within the proposed District approve of its creation. It is apparent that the process of CC&N expansion is completely the reverse. If one views a property being included as a result of an expansion or extension of a public utility CC&N, I believe that an argument could be made that the inclusion would be a “taking” in the same sense of a property being taken as a result of an eminent domain action, however, in this case there would be no compensation to the property owner forced to abrogate some of their inherent rights.

I would like to conclude with a brief comment concerning the possible connections that may exist within the certificated boundaries of East Slope Water Company. It is not possible to assign any of the blame upon the current Applicants for this apparent blatant violation of Commission rules; there remains the liability associated with these past actions. I can recall specifically the eloquent argument put forward by the Applicants in their pursuit of higher rates, one significant element to that argument being the “risk” that the Applicants were assuming upon the acquisition of the McLain assets. To paraphrase a recent rather controversial quote, it would seem to me “that some of the risk chickens have come home to roost”. It is my opinion that it would be perfectly in order to have the expectation that East Slope Water Company would in some manner be compensated by Southern Sunrise Water Company so that it (Southern Sunrise) may continue to enjoy the past, current, and future benefits of these connections, and to further

be compensated for the loss of that portion of their CC&N that would, of necessity, be transferred from East Slope Water Company to Southern Sunrise Water Company. Additional I would stress that none of this cost would in any way be assigned to the current and/or future ratepayers of any public utility owned or operated by the Applicants.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Stephen A. Cockrum". The signature is written in black ink and is positioned above the printed name.

Stephen A Cockrum
Hereford, AZ