

ORIGINAL

OPEN MEETING ITEM



0000094441

Interim Executive Director

220

COMMISSIONERS  
KRISTIN K. MAYES - Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP



ARIZONA CORPORATION COMMISSION

DATE: MARCH 11, 2009  
DOCKET NOS: W-03067A-04-0216 and WS-04247A-04-0604  
TO ALL PARTIES:

Arizona Corporation Commission  
**DOCKETED**

MAR 11 2009

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Order on:

BEAVER DAM WATER COMPANY and  
SUNRISE UTILITIES, L.L.C.  
(EXTENSION OF TIME DEADLINE CONTAINED  
IN DECISION NO. 68247)

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 20, 2009

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 Open Meeting to be held on:

MARCH 31, 2009 and APRIL 1, 2009

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 Director's Office at (602) 542-3931.

RECEIVED

2009 MAR 11 A 11:39

AZ CORP COMMISSION  
DOCKET CONTROL

MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347  
[www.azcc.gov](http://www.azcc.gov)

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SBernal@azcc.gov](mailto:SBernal@azcc.gov)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

KRISTIN K. MAYES - Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

IN THE MATTER OF THE APPLICATION OF  
BEAVER DAM WATER COMPANY FOR  
DELETION OF A PORTION OF ITS  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY IN MOHAVE COUNTY, ARIZONA.

DOCKET NO. W-03067A-04-0216

IN THE MATTER OF THE APPLICATION OF  
SUNRISE UTILITIES, L.L.C. FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WATER AND  
WASTEWATER SERVICE IN MOHAVE  
COUNTY, ARIZONA.

DOCKET NO. WS-04247A-04-0604

DECISION NO. \_\_\_\_\_

**ORDER EXTENDING TIME  
DEADLINE CONTAINED IN  
DECISION NO. 68247**

Open Meeting  
March 31 and April 1, 2009  
Phoenix, Arizona

**BY THE COMMISSION:**

\* \* \* \* \*

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

**FINDINGS OF FACT**

1. On October 25, 2005, the Arizona Corporation Commission ("Commission") issued Decision No. 68247 which approved the application of Beaver Dam Water Company ("BDWC") to delete a small portion of its certificated service area in Mohave County, Arizona, and approved the application of Sunrise Utilities, L.L.C. ("Sunrise") for a Certificate of Convenience and Necessity ("Certificate") to provide public water and wastewater utility service to various parts of Mohave County, Arizona, which included the area described in BDWC's application for deletion. The approval was subject to certain conditions, including that Sunrise be required to file a copy of the

1 Arizona Department of Environmental Quality's ("ADEQ") Approval to Construct ("ATC") its  
2 arsenic treatment facilities by October 31, 2005. Decision No. 68247 also required Sunrise to file,  
3 within one year of the effective date of the Decision, copies of the following documents:

- 4 • a copy of the franchise from Mohave County for the certificated  
service area for water and wastewater;
- 5 • a copy of the ADEQ ATC for public water facilities;
- 6 • a copy of the developers' Letter(s) of Adequate Water Supply  
7 issues by the Arizona Department of Water Resources ("ADWR");  
and
- 8 • a copy of the Letter of Intent and/or Aquifer Protection Permit  
("APP") issued by ADEQ.

9  
10 2. On November 22, 2005, Sunrise filed a request for retroactive approval for an  
11 extension of time of two years, until October 31, 2007, to file a copy of the ADEQ's ATC arsenic  
12 treatment facilities because additional testing was required to determine whether arsenic removal was  
13 needed. The request also stated that the legal descriptions on Exhibit B attached to the Decision was  
14 mislabeled and requested that a revised legal description which was included with Sunrise's request  
replace the original Exhibit B.

15 3. On November 23, 2005, by Procedural Order, the Commission's Utilities Division  
16 ("Staff") was ordered to file a response by December 9, 2005.

17 4. On December 9, 2005, Staff filed a response to Sunrise's request for a two year  
18 extension of time for testing to determine whether arsenic removal was needed and for approval to  
19 replace Exhibit B to Decision No. 68247 with a correctly labeled Exhibit B. Staff agreed to the  
20 replacement of Exhibit B to Decision No. 68247 with the correctly labeled Exhibit B. However, Staff  
21 disagreed with the requested two year extension of time in which Sunrise was to file a copy of its  
22 ATC for arsenic facilities, if necessary, and recommended an extension of time be limited to one year  
23 from the date of the Decision (until October 25, 2006) to show Staff an indication that Sunrise would  
24 fulfill a bona fide need for service.

25 5. On December 14, 2005, by Procedural Order, it was ordered nunc pro tunc that  
26 Exhibit B to Decision No. 68247 should be replaced with the correctly labeled Exhibit B attached to  
27 the Procedural Order and Sunrise was granted a one year extension of time from the date of the  
28

1 Decision, until October 25, 2006, to file a copy of its ADEQ ATC for arsenic treatment facilities, if  
2 necessary, to provide water service.

3 6. On October 4, 2006, Sunrise filed with the Director of the Commission's Utilities  
4 Division documentary evidence that it does not require arsenic treatment facilities and a request for  
5 an additional year, until October 25, 2007, to file the following:

- 6 • a copy of the franchise from Mohave County for the certificated  
7 service area for water and wastewater;
- 8 • a copy of the ADEQ ATC for public water facilities;
- 9 • a copy of the developers' Letter(s) of Adequate Water Supply  
issued by ADWR; and
- 10 • a copy of the Letter of Intent and/or APP issued by ADEQ.

11 7. On November 7, 2006, Staff filed its response and recommended approval of  
12 Sunrise's request for an extension because it appeared that there was a need for service. Staff further  
13 indicated in its response that "Attached to the letter was evidence that the water quality did not  
14 necessitate arsenic treatment facilities."

15 8. On November 28, 2006, by Procedural Order, the request of Sunrise was granted for  
16 an extension of one year, until October 25, 2007, to file copies of the following: a copy of the  
17 Mohave County franchise for the certificated service area for water and wastewater; a copy of the  
18 ADEQ ATC public water facilities; a copy of the developers' Letter(s) of Adequate Water Supply;  
19 and a copy of the Letter of Intent and/or Aquifer Protection Permit issued by ADEQ.

20 9. On January 25, 2007, Sunrise filed a copy of its franchise issued by Mohave County.

21 10. On October 12, 2007, Sunrise filed an update to the information which had been  
22 contained in its October 4, 2006, request, and further requested an additional twelve month extension  
23 of time to comply with Decision No. 68247, until October 25, 2008, to file copies of the following: a  
24 copy of the ADEQ ATC public water facilities; a copy of the developers' Letter(s) of Adequate  
25 Water Supply; and a copy of the Letter of Intent and/or Aquifer Protection Permit issued by ADEQ.

26 11. On January 29, 2008, Staff filed a memorandum which indicated that Staff did not  
27 oppose the additional request for an extension of time, until October 25, 2008, in which to file the  
28 required documents. Staff further indicated that it believed that it had seen "no Commission ruling

1 on the Company assertion that the ATC on arsenic treatment facilities was no longer necessary and  
2 this item therefore remains outstanding.”

3 12. On February 5, 2008, the Sunrise’s attorney filed a copy of his letter which had been  
4 docketed on October 4, 2006, on behalf of Sunrise with an attached lab report from Del Mar  
5 Analytical which found that Sunrise’s water contains 8.3 parts per billion (“ppb”) of arsenic which is  
6 below the new maximum contaminant level allowed by the U.S. Environmental Protection Agency  
7 (“EPA”) and negated the need for arsenic treatment facilities.

8 13. On February 20, 2008, by Procedural Order, Sunrise’s request was approved for an  
9 extension of time until October 25, 2008, to file copies of the following: a copy of the ADEQ ATC  
10 for public water facilities; a copy of the developers’ Letter(s) of Adequate Water Supply; and a copy  
11 of the Letter of Intent and/or Aquifer Protection Permit to be issued by ADEQ. Sunrise was also  
12 relieved of the requirement to file a copy of an ATC issued by ADEQ for arsenic treatment facilities  
13 as required by Decision No. 68247 since Sunrise had filed documentary evidence that its water  
14 contains less arsenic than the maximum contaminant level allowed by the United States EPA.

15 14. On November 14, 2008, Sunrise made two filings with the Commission. The first  
16 consisted of a copy of the Analysis of Adequate Water Supply issued by ADWR as required by  
17 Decision No. 68247. The second was a request by Sunrise for an additional extension of time, until  
18 October 25, 2009, to file a copy of the ATC for public water facilities and a copy of the Letter of  
19 Intent and/or APP both of which are to be issued by ADEQ. Sunrise’s request for an extension of  
20 time to complete compliance with the Commission’s Decision describes the ongoing efforts to  
21 develop the certificated service area during a difficult real estate market. Attached to Sunrise’s  
22 request was a copy of a letter dated October 31, 2008, from the president of one of the development  
23 companies describing its actions to proceed with the development of property in the certificated area.

24 15. On January 25, 2009, Staff filed a memorandum in response to Sunrise’s additional  
25 request for an extension of time to comply with Decision No. 68247. Staff weighed the pros and  
26 cons for a further extension of time for the Company to meet the remaining compliance elements of  
27 the Decision and reviewed the difficulties that developers of the property have had to overcome.  
28 Staff ultimately concluded that the requested extension of time should be approved because Sunrise

1 has been moving forward with the compliance requirements of Decision No. 68247.

2 16. Staff further recommends that no further extensions of time should be granted.

3 17. Under the circumstances, we find that Sunrise's November 14, 2008, request for an  
4 extension of time is reasonable and should be approved; however, we will put Sunrise on notice that  
5 any further requests for extensions of time to comply must demonstrate that extraordinary  
6 circumstances exist that warrant an additional extension.

7 **CONCLUSIONS OF LAW**

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

10 2. The Commission has jurisdiction over Sunrise and the subject matter of the request  
11 addressed herein.

12 3. Staff's recommendations for the extension of time to file copies of the required  
13 documentation as set forth in Findings of Fact No. 15 should be adopted, but absent extraordinary  
14 circumstances, no further extensions should be granted.

15 ...  
16 ...  
17 ...  
18 ...  
19 ...  
20 ...  
21 ...  
22 ...  
23 ...  
24 ...  
25 ...  
26 ...  
27 ...

28

**ORDER**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS THEREFORE ORDERED the Sunrise Utilities, L.L.C. is hereby granted an extension of time, until October 25, 2009, to file copies of the following documents as set forth in Decision No. 68247: ATC for public water facilities; and, Letter of Intent and/or APP issued by ADEQ.

IT IS FURTHER ORDERED that no further extensions of time to file the aforementioned documents shall be granted absent extraordinary circumstances.

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, MICHAEL P. KEARNS, 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 \_\_\_\_\_, 2009.

\_\_\_\_\_  
MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

MES:db

1 SERVICE LIST FOR:

BEAVER DAM WATER COMPANY and SUNRISE  
UTILITIES, L.L.C.

2  
3 DOCKET NOS.:

W-03067A-04-0216 and WS-04247A-04-0604

4 BEAVER DAM WATER COMPANY  
5 P.O. Box 550  
6 Beaver Dam, AZ 86432

7 Richard L. Sallquist  
8 SALLQUIST, DRUMMOND & O'CONNOR, P.C.  
9 1430 E. Missouri, Suite B125  
10 Phoenix, AZ 85014-2478  
11 Attorneys for Sunrise Utilities, L.L.C.

12 Stephen Timinskas  
13 P.O. Box 3630  
14 Mesquite, NV 89024

15 Janice Alward, Chief Counsel  
16 Legal Division  
17 ARIZONA CORPORATION COMMISSION  
18 1200 West Washington Street  
19 Phoenix, AZ 85007

20 Ernest Johnson, Director  
21 Utilities Division  
22 ARIZONA CORPORATION COMMISSION  
23 1200 West Washington Street  
24 Phoenix, AZ 85007  
25  
26  
27  
28