

ORIGINAL



0000094446

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

DOCKETED

COMMISSIONERS

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

2009 MAR 11 P 2:37

MAR 11 2009

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY	<i>[Signature]</i>
-------------	--------------------

IN THE MATTER OF THE APPLICATION OF
LIVCO WATER COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY FOR THE
PROVISION OF WATER SERVICE IN
PORTIONS OF APACHE COUNTY, ARIZONA.

DOCKET NO. W-02121A-06-0316

IN THE MATTER OF THE APPLICATION OF
LIVCO SEWER COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY FOR THE
PROVISION OF WASTEWATER SERVICE IN
PORTIONS OF APACHE COUNTY, ARIZONA.

DOCKET NO. SW-02563A-06-0316

**STAFF'S RESPONSE TO MOTION FOR
PARTIAL CERTIFICATE OF
CONVENIENCE AND NECESSITY**

On May 4, 2006, Livco Water Company ("LWC") and Livco Sewer Company ("LSC") (collectively the "Companies") filed a joint application before the Arizona Corporation Commission ("Commission") requesting an extension of their Certificates of Convenience and Necessity ("CC&N") to provide water and wastewater service within various parts of Apache County, Arizona.

On January 19, 2007, the Commission issued Decision No. 69258, granting the Companies an Order Preliminary. The Decision further directed the Companies, within two years of the date the Decision was issued, to acquire various documents, including Letters of Adequate Water Supply, after which the Companies were to file a Motion requesting that the Order Preliminary become a permanent CC&N extension.

In order to comply with Decision No. 69258, the Companies were to have filed the necessary documents on or before January 19, 2009. To date, the companies have filed neither the documentation ordered nor the associated motion.

On January 28, 2009, Staff filed a Memorandum to the Docket in this matter, requesting that the docket be administratively closed.

1 On January 29, 2009, the Companies filed a joint motion objecting to the administrative
2 closure and requesting that Staff grant an extension of time to comply with the deadlines set forth in
3 Decision No. 69258.

4 Staff hereby provides its response to the Companies' motion.

5 **I. EXTENSION OF TIME.**

6 Initially, the Companies felt that they would be able to comply with the Commission's Order.
7 However, on April 20, 2007, shortly after the Order was issued, the Company filed in this docket a
8 letter directed to Staff indicating that the Company anticipated trouble complying with the two-year
9 deadline. Naturally, filing a request for extension of time at that point would have been premature.
10 Now, however, the deadline for compliance has come and gone.

11 Decision No. 69258 states:

12 "IT IS FURTHER ORDERED that if Livco Water Company and Livco
13 Sewer Company do not timely comply with the above ordering
14 paragraphs then the Orders Preliminary approved herein shall be deemed
15 null and void. In such event, Staff shall file a memorandum to close this
16 docket."

17 Staff does not have the authority to unilaterally modify the terms of Decision No. 69258.
18 Once issued, only the Commission can modify the terms of its Order.

19 Clearly, the necessary documents have not been obtained, and Staff has therefore filed its
20 request for administrative closure.

21 It is Staff's position that in the absence of evidence that the Companies have complied with
22 the terms of Decision No. 69258, the appropriate action is administrative closure.

23 **II. GRANTING OF A PARTIAL CC&N.**

24 The Companies have requested that Staff modify its January 28, 2009 Memorandum and
25 recommend the issuance of a separate CC&N for LSC, as well as a CC&N for the single territory for
26 which LWC believes it has filed the appropriate documentation. However, the same problem arises
27 with this request that arises in the request above. The Commission did not write such a contingency
28 into Decision No. 69258.

1 The Order is very clearly an "all or nothing" proposition. The Companies requested
2 extensions of their CC&N service territories and the Commission ordered them to achieve certain
3 things in order to be granted the requested extensions. There is no provision in the Order regarding
4 "partial compliance". The Commission clearly ordered that in the event the Companies were unable
5 to achieve compliance, the docket would be closed.

6 The Commission has already ruled on the matter, and if the Company would like an outcome
7 not previously considered in Decision No. 69258, then the Company must ask the Commission to
8 modify its Order.

9 Staff has been directed to request administrative closure under the current circumstances.
10 Staff has done so.

11 **III. CONCLUSION.**

12 Decision No. 69258 is very clear. In the event the Companies failed to provide the necessary
13 documentation, Staff was to file a motion for administrative closure of the docket. Staff has
14 complied with the Commission directive.

15 Staff is not prepared to modify its previous recommendation in this matter and is frankly
16 unsure that such modification would have any legal effect.

17 WHEREFORE, Staff respectfully requests that the Hearing Division take notice of Decision
18 No. 69258 and administratively close this docket.

19 RESPECTFULLY SUBMITTED this 11th day of March, 2009.

20
21
22
23 
24 Kevin O. Torrey SBN#022300
25 Attorney, Legal Division
26 Arizona Corporation Commission
27 1200 West Washington Street
28 Phoenix, Arizona 85007
(602) 542-3402

1 Original and thirteen (13) copies
2 of the foregoing were filed this
11th day of March, 2009 with:

3 Docket Control
4 Arizona Corporation Commission
1200 West Washington Street
5 Phoenix, Arizona 85007

6 Copy of the foregoing mailed this
11th day of March, 2009 to:

7 Richald L. Sallquist
8 SALLQUIST, DRUMMOND & O'CONNOR
4500 S. Lakeshore Drive, Suite 339
9 Tempe, Arizona 85282
Attorneys for Livco Water Company and
10 Livco Sewer Company

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

