

OPEN MEETING ITEM

ORIGINAL

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



0000098187

Executive Director

22

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

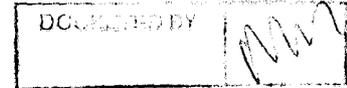
DOCKETED

OCT - 1 2009

DATE: OCTOBER 1, 2009

DOCKET NO.: W-02483A-09-0064

TO ALL PARTIES:



Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

TONTO HILLS UTILITY COMPANY
(SALE OF ASSETS/CANCEL 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 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:

OCTOBER 13, 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:

OCTOBER 20, 2009 and OCTOBER 21, 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 OCT - 1 P 3:27

Z CORP COMMISSION
DOCKET CONTROL

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347
www.azcc.gov

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF
9 TONTO HILLS UTILITY COMPANY FOR
10 APPROVAL TO CANCEL ITS CERTIFICATE OF
11 CONVENIENCE AND NECESSITY AND TO
12 SELL ITS ASSETS TO TONTO HILLS
13 DOMESTIC WATER IMPROVEMENT DISTRICT.

DOCKET NO. W-02483A-09-0064

DECISION NO. _____

OPINION AND ORDER

14 DATE OF HEARING: September 9, 2009

15 PLACE OF HEARING: Phoenix, Arizona

16 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

17 APPEARANCES: Mr. Steven C. Polger, LAW OFFICES OF STEVEN C.
18 POLGAR, on behalf of Tonto Hills Utility Company;

19 Mr. Steve Wene, MOYES SELLERS & SIMS, LTD,
20 and Mr. Charles Civer, on behalf of Tonto Hills
21 Domestic Water Improvement District; and

22 Mr. Kevin Torrey, Staff Attorney, Legal Division, on
23 behalf of the Utilities Division of the Arizona
24 Corporation Commission.

25 **BY THE COMMISSION:**

26 On February 17, 2009, Tonto Hills Utility Company ("Tonto Hills") filed with the Arizona
27 Corporation Commission ("Commission") an application to cancel its Certificate of Convenience and
28 Necessity ("CC&N") and for approval of the sale of its assets to Tonto Hills Domestic Water
Improvement District ("District"). The application states that the District is being formed so that it
can acquire the assets of Tonto Hills, take over the day-to-day management of the utility, and provide
water utility service to the property owners in the Tonto Hills Community.

On March 19, 2009, the Commission's Utilities Division ("Staff") filed an Insufficiency
Letter in this docket, stating that Tonto Hills' application had not met the sufficiency requirements as
outlined in the Arizona Administrative Code ("A.A.C.").

1 On April 6, 2009, Tonto Hills filed a copy of the notice sent to its customers regarding the
2 application.

3 On May 12, 2009, Staff filed its Second Insufficiency Letter and requested Tonto Hills
4 provide additional information.

5 On June 18, 2009, Staff filed a Sufficiency Letter stating that Tonto Hills' application had met
6 the sufficiency requirements as outlined in the A.A.C.

7 On July 16, 2009, by Procedural Order, the hearing was set to begin on September 9, 2009,
8 and other procedural deadlines were established.

9 On July 23, 2009, Staff filed a Request for Partial Administrative Closure. According to
10 Staff's request, the District had been assigned a separate docket number (W-20653A-09-0064);
11 however, the District is not an entity regulated by the Commission and no docket number should have
12 been assigned. Therefore, Staff requested that Docket No. W-20653A-09-0064 be administratively
13 closed.

14 On August 3, 2009, Tonto Hills filed certification that notice of the application and hearing
15 date had been published in the *Sonoran News*, a newspaper of general circulation in the Tonto Hills'
16 service area, and that all of Tonto Hills' customers had been notified via first class mail. Additionally,
17 the notice advised that Mr. Steven C. Polgar, Esq., would be representing Tonto Hills in this matter.

18 On August 6, 2009, Harry L. Howe, Esq. filed a Notice stating he did not represent Tonto
19 Hills in this proceeding.

20 On August 7, 2009, Staff filed a Staff Report recommending approval of Tonto Hills'
21 application with conditions.

22 On August 17, 2009, the District filed for Leave to Intervene as a party in this matter.

23 On August 21, 2009, Mr. Steven C. Polgar, Esq. filed a Notice of Appearance, on behalf of
24 Tonto Hills.

25 On August 25, 2009, by Procedural Order, the District was granted intervention in this matter
26 and Docket Control was directed to administratively close Docket No. W-20653A-09-0064.

27 On September 9, 2009, a full public hearing was convened before a duly authorized
28 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Tonto Hills, Staff

1 and the intervenor appeared through counsel and presented testimony. Staff presented evidence in
2 the form of a Staff Report. No members of the public appeared to give public comment. At the
3 conclusion of the hearing, Staff was directed to file a late-filed exhibit.

4 On September 21, 2009, Staff filed its late-filed exhibit.

5 After receipt of the late-filed exhibit, the matter was taken under advisement pending
6 submission of a Recommended Opinion and Order to the Commission.

7 * * * * *

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

10 **FINDINGS OF FACT**

11 1. Tonto Hills is a public service corporation providing water utility service to an area
12 approximately six miles east of the Town of Cave Creek, in Maricopa County, Arizona.

13 2. Tonto Hills received its CC&N in Commission Decision No. 55491 (March 19, 1997);
14 has a service area encompassing approximately 465 acres or three quarters of a square mile; and
15 serves 129 residential customers.

16 3. On October 30, 2008, the customers of Tonto Hills petitioned Maricopa County to
17 form the District and the Maricopa County Board of Supervisors approved the formation of the
18 District on January 28, 2009.

19 4. On February 17, 2009, Tonto Hills filed an application with the Commission
20 requesting approval to sell its assets to the District and to cancel its CC&N.

21 5. On August 3, 2009, Tonto Hills filed certification that it provided notice of the
22 application and hearing date to its customers via first class mail and by publishing notice in the
23 *Sonoran News*, a newspaper of general circulation in the Tonto Hills' service area.

24 6. On August 7, 2009 and September 4, 2009, Staff filed a Staff Report and Amended
25 Staff Report, respectively, recommending that the Commission approve Tonto Hills' application with
26 conditions.

27 7. Mr. Charles Dunning, President of Tonto Hills, testified he believes Tonto Hills
28 customers will benefit from forming a district because they will be shareholders in the company, have

1 lower rates, and the assurance of reliable service. (Tr. at 10) Mr. Dunning further testified the owners
2 of Tonto Hills, who are also the seven members of the board of directors for the Company, would
3 like to retire from the day-to-day management responsibilities of the water company, and that is why
4 the decision was made to sell the company. (Tr. at 12)

5 8. Mr. Charles Civer, a member of the Board of Directors for the District, testified that
6 he is responsible for overseeing the sale of Tonto Hills' assets to the District as well as getting the
7 District's operations up and running. (Tr. at 22) He testified that the District has retained Tonto
8 Hills' engineer and its certified operator to continue performing the day-to-day operations for the
9 District. (Tr. at 29) Mr. Civer stated that the District will initially continue to use the accounting firm
10 that currently handles billing for Tonto Hills. (Id.)

11 9. Mr. Civer testified that the District's board members will manage the day-to-day
12 operations of the water company and that the Board is comprised of three members who have
13 financial backgrounds, as well as experience with water companies. (Tr. at 30)

14 10. Staff concluded that, based on the management the District will have in place, the
15 proposed transfer of assets to the District will not have an adverse effect on service quality or
16 operation of the company. (SER at 2)

17 11. The owners of Tonto Hills and the District have memorialized the proposed sale of
18 Tonto Hills' assets to the District in a Letter of Intent ("LOI"). Under the LOI, the District will
19 acquire all tangible and intangible assets, contractual, ownership, and leasehold rights and interest
20 held by Tonto Hills, in addition to assuming all liabilities of Tonto Hills.¹ The agreement states the
21 purchase price will be \$442,000, plus the amount of the existing WIFA loan amount of approximately
22 \$202,000.²

23 12. Under the terms of the LOI, both Tonto Hills and the District are required to meet
24 certain conditions by December 31, 2009. Mr. Dunning testified that Tonto Hills completed,
25 approximately a year ago, sandblasting and applying a new epoxy coating to the water company's
26 tank, and that the work was done consistent with industry standards and has been inspected by the
27

28 ¹ Staff Report Exhibit 2.

² Staff Exhibit 2.

1 District. (Tr. at 17) He further testified that during the same timeframe, Tonto Hills completed work
2 to replace sections of the potable water pipe at Blue Wash Road and Tonto Road and at two
3 intersections on La Planta and Tonto roads. (Tr. at 18)

4 13. The LOI further states that Tonto Hills will pay off an existing WIFA loan
5 immediately following the close of the sale to the District. Mr. Dunning testified that Tonto Hills has
6 an existing WIFA loan in the amount of approximately \$202,000 and that loan will be paid off with
7 the proceeds from the sale to the District. (Tr. at 19)

8 14. The District's witness testified that progress is being made towards meeting its
9 conditions outlined in the LOI. (Tr. at 22) The witness explained that the District has been
10 successfully formed; that a financing application has been submitted to WIFA to cover the purchase
11 cost of Tonto Hills and to make future system improvements³; that the first draft of the assignment of
12 Central Arizona Project ("CAP") allocation from Tonto Hills to the District has been completed; that
13 discussions are on-going with the City Council of Scottsdale regarding the reassignment of the treat
14 and transport contract for CAP water from Tonto Hills to the District; and that a system inspection
15 has been conducted and the District found the Tonto Hills system satisfactory. (Tr. at 23-29) The
16 witness further testified that the District is on the WIFA priority list, that the WIFA financing
17 application is scheduled for the December Board meeting, and that the District anticipates the WIFA
18 loan will be finalized within three to four months from approval by the Board. (Tr. at 26)

19 15. Staff recommends that the finalized contract and bill of sale be filed as a compliance
20 item in this docket.

21 16. Tonto Hills' witness testified that customer deposits and advances total approximately
22 \$7,900. The District's witness testified that all customer deposits and advances will be honored as a
23 part of the sale agreement.

24 17. Staff recommends that the District be required to honor all obligations of Tonto Hills
25 associated with refundable customer deposits without any arbitrary timeframe for submission of
26 claims.

27
28 ³ The amount of the requested WIFA loan is \$800,000.

1 WATER SYSTEM

2 18. Tonto Hills' sole source of water comes from the CAP. According to Staff's
3 Engineering Report, the City of Scottsdale treats and transports CAP water, for use by Tonto Hills.
4 Staff reports that the Tonto Hills system consists of a 64,000 gallon storage tank, a gravity fed
5 distribution system, meters, and service lines. (SER at 2)

6 19. According to Tonto Hills' Annual Reports for the years 2004 through 2008, the
7 company has experienced an average growth rate of two new connections annually. (SER at 2)

8 20. Staff reviewed Tonto Hills' water pumped and water sold data and determined that the
9 system has a non-account water loss exceeding 12 percent. Staff attributed the non-account water
10 loss to leaks in the water company's aging infrastructure that will need to be repaired or replaced.
11 According to Staff, a portion of the WIFA loan applied for by the District will cover costs associated
12 with the needed storage tank repairs and will correct the system's water loss issue. (SER at 2)

13 21. Based on Staff's review, Staff concluded that the system has adequate production and
14 storage capacity.

15 22. The Maricopa County Environmental Services Department has determined that the
16 Tonto Hills water system is delivering water that meets water quality standards required by the
17 A.A.C.

18 23. The Tonto Hills service area is located within the Arizona Department of Water
19 Resources' ("ADWR") Phoenix Active Management Area ("AMA"), and Tonto Hills is in
20 compliance with AMA reporting and conservation rules.

21 24. Tonto Hills has no outstanding compliance issues with the A.C.C.

22 25. The Utilities Division Consumer Services database shows that zero complaints have
23 been filed against Tonto Hills in the last three years.

24 26. No public comments have been filed in opposition to the application.

25 27. Staff's recommendation for approval of the application is reasonable and should be
26 adopted.

27 CONCLUSIONS OF LAW

28 1. Tonto Hills Utility Company is a public service corporation within the meaning of

1 Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

2 2. The Commission has jurisdiction over Tonto Hills Utility Company and the subject
3 matter of the application.

4 3. Notice of the application was provided in accordance with the law.

5 4. The proposed sale of Tonto Hills Utility Company's assets to the Tonto Hills
6 Domestic Water Improvement District will not have an adverse effect on service quality or operations
7 of the utility.

8 5. Tonto Hills' CC&N should be cancelled, subject to compliance with Staff's stated
9 conditions.

10 6. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

11 **ORDER**

12 IT IS THEREFORE ORDERED that the application of Tonto Hills Utility Company to sell its
13 assets to the Tonto Hills Domestic Water Improvement District, is hereby approved.

14 IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity granted to
15 Tonto Hills in Commission Decision No. 55491 (March 19, 1997), shall immediately cancel upon
16 Tonto Hills Utility Company filing with Docket Control, as a compliance item in this docket, the
17 final contract and bill of sale executed by Tonto Hills Utility Company and the Tonto Hills Domestic
18 Water Improvement District.

19 ...
20 ...
21 ...
22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

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 FURTHER ORDERED that the approval of this application is conditioned on the Tonto Hills Domestic Water Improvement District commitment to honor all liabilities of Tonto Hills Utility Company relating to customer accounts, including, but not limited to, customer deposits, and customer meter advance credits.

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, ERNEST G. JOHNSON, 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.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

TONTO HILLS UTILITY COMPANY and TONTO
HILLS DOMESTIC WATER IMPROVEMENT
DISTRICT

3 DOCKET NO.:

W-02483A-09-0064

4
5 Charles Dunning
6 TONTO HILLS UTILITY CO.
11802 East Blue Wash Road
Cave Creek, Arizona 85331

7 Steven C. Polgar
8 LAW OFFICES OF STEVEN C. POLGAR
9 P.O. Box 3365
Carefree, Arizona 85377
Attorney for Tonto Hills Utility Co.

10 Steve Wene
11 MOYES SELLERS & SIMS LTD.
12 1850 North Central Avenue, Suite 1100
Phoenix, Arizona 85004
Attorneys for Tonto Hills Domestic
Water Improvement District

13 Charles Civer
14 TONTO HILLS DOMESTIC
15 WATER IMPROVEMENT DISTRICT
42265 North Old Mine Road
Cave Creek Arizona 85331

16 Janice Alward, Chief Counsel
17 Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

18 Steve Olea, Director
19 Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

21

22

23

24

25

26

27

28