

OPEN MEETING ITEM



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Executive Director

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



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ARIZONA CORPORATION COMMISSION 27

2009 AUG 11

AZ CORP COMMISSION
DOCKET CONTROL

DATE: AUGUST 7, 2009
DOCKET NO: W-02304A-09-0153

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

COMMUNITY WATER COMPANY OF GREEN VALLEY
(FINANCE)

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:

AUGUST 17, 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:

AUGUST 25, 2009 and AUGUST 26, 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.

Arizona Corporation Commission
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ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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 COMMUNITY WATER COMPANY OF GREEN
10 VALLEY FOR AUTHORITY TO ISSUE DEBT UP
11 TO \$2.81 MILLION.

DOCKET NO. W-02304A-09-0153

DECISION NO. _____

ORDER

12 Open Meeting
13 August 25 and 26, 2009
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

16 Having considered the entire record herein and being fully advised in the premises, the
17 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

18 * * * * *

19 FINDINGS OF FACT

20 1. The Commission granted Community Water Company of Green Valley ("CWCGV")
21 its initial Certificate of Convenience and Necessity ("CC&N") to provide water service in Pima
22 County, Arizona, pursuant to Decision No. 47912 (May 1, 1977). The Commission granted CC&N
23 extensions to CWCGV in Decision Nos. 57549 (September 9, 1991), 63310 (January 11, 2001),
24 70164 (February 27, 2008), and 70551 (October 23, 2008). CWCGV also acquired the CC&N of
25 New Pueblo Water pursuant to Decision No. 60082 (February 20, 1997).

26 2. CWCGV is a non-profit Arizona corporation owned by its members. CWCGV serves
27 approximately 12,090 connections, mostly residential customers. Its current rates were approved in
28 Decision No. 69205 (December 21, 2006).

1 **Background**

2 3. In Decision No. 67515 (January 20, 2005), CWCGV received authorization for 1) an
3 18-month, non-revolving line of credit in the amount of \$4 million in order to finance arsenic
4 treatment equipment, Central Arizona Project ("CAP") rights, and other miscellaneous equipment
5 ("Facility 1"), and 2) a 60-month term loan in the amount \$4 million to pay off Facility 1.

6 4. According to Staff, on October 10, 2006, CWCGV filed a request for approval to
7 extend the terms of Facility 1 from 18 months to 24 months.

8 5. Staff stated that on November 22, 2006, it filed a memorandum concluding that the
9 authorization for Facility 1 was sufficiently broad to permit the requested extension.

10 6. On September 5, 2008, CWCGV filed an application under Docket No. W-02304A-
11 08-0465 for approval to issue Tax-Exempt Industrial Development Authority Bonds ("IDA Bonds")
12 not to exceed \$3.6 million in order to pay off the \$2.5 million Facility 1 balance. The application
13 also sought approval of \$790,000 in CAP loans and to finance \$310,000 of other planned capital
14 expenditures.

15 7. On October 10, 2008, CWCGV filed an amendment to its application stating that
16 CWCGV had learned that the IDA Bonds were not available to CWCGV as a means to refinance its
17 projects. CWCGV noted that it also learned that either a long-term extension of Facility 1 or a
18 traditional long-term loan would result in higher interest costs than a one-year term loan. Based on
19 market conditions, CWCGV's bank recommended utilization of the one-year term loan.

20 8. Facility 1 matured on November 16, 2008. According to CWCGV, the lender
21 extended the maturity for an additional twelve months to allow time for CWCGV to obtain the
22 necessary regulatory approval of the re-financing in order to avoid placing CWCGV in default on
23 Facility 1. As such, CWCGV must re-finance Facility 1 by November 16, 2009, in order to avoid
24 default.

25 9. On December 31, 2008, Staff filed its Staff Report on the amended application,
26 recommending conditional approval.

27 10. On January 28, 2009, CWCGV filed correspondence indicating that because of certain
28 economic factors, financing under a short-term letter of credit as requested in the amended

1 application was no longer feasible. CWCGV again amended its initial application, this time seeking
2 approval for a long-term loan.

3 11. On February 13, 2009, CWCGV filed a Request for Procedural Conference.

4 12. Pursuant to a Procedural Order filed February 24, 2009, a Procedural Conference was
5 held on March 12, 2009. The parties appeared with counsel.

6 13. The parties agreed that, because the material points in the original application had
7 changed significantly, CWCGV should file a Motion to Withdraw its Application under Docket No.
8 W-02304A-08-0465 and file a new application for approval of a long-term loan.¹

9 14. On March 26, 2009, CWCGV filed an application for authority to issue \$2,810,000 of
10 long-term debt ("Application"). The purpose of the proposed financing is to pay off Facility 1 and to
11 fund \$310,000 of planned capital improvements.

12 15. On May 5, 2009, CWCGV filed its Affidavit of Publication, indicating that Public
13 Notice of its Application was published on May 3, 2009, in the *Green Valley News and Sun*.

14 16. On June 25, 2009, Staff filed its Staff Report recommending approval of the requested
15 financing authorization.

16 17. On July 7, 2009, CWCGV filed its Comments on Staff Report, requesting that Staff
17 revise the recommended filing date for the Arizona Department of Water Resources ("ADWR")
18 compliance documentation. CWCGV also disagreed with Staff's statement that its long-term
19 agreement with the Central Arizona Water Conservation District ("CAWCD") regarding payment for
20 additional allocations from the CAP may constitute a long-term debt requiring Commission approval
21 under A.R.S. §§ 40-301 and 40-302. However, CWCGV was not averse to Staff's ultimate
22 recommendation that CWCGV file an application regarding its agreement with the CAWCD so that
23 the issue may be considered by the Commission.²

24 18. On July 15, 2009, CWCGV filed a copy of the ADWR Water Provider Compliance
25 Status Report for its system.

26
27 ¹ On March 26, 2009, the Cooperative filed a Motion to Dismiss in Docket No. W-02304A-08-0465, and on April 3,
2009, the docket was closed, pursuant to Administrative Closure Number 70920.

28 ² See Findings of Fact Nos. 26-30 and 36-40 for a discussion of these issues.

1 **Loan Terms**

2 19. The lender will be Chase Bank. CWCGV filed a copy of Chase Bank's Proposed
3 Credit Facility Terms and Conditions as Exhibit "2" to the Application. Under the terms and
4 conditions, the maximum principal is \$2,810,000. The loan will be payable in 59 equal principal and
5 interest payments amortized over 20 years, and one final balloon payment of the remaining balance.

6 20. The interest rate will be variable based on the Chase Bank floating rate plus 100 basis
7 points, determined by the 30-day LIBOR plus 250 basis points. According to Staff, as of May 13,
8 2009, the Chase Bank current floating rate was 3.25 percent and the current 30-day LIBOR is 0.35
9 percent. Market conditions at the time of closing will dictate the final loan terms.

10 21. Chase Bank will require a Deed of Trust, granting Chase Bank first claim on
11 CWCGV's assets. This is the same requirement as on Facility 1.

12 **Financial Analysis**

13 22. Staff used CWCGV's audited financial report for the year ended December 31, 2008,
14 to conduct its financial analysis and determine the effects of the *pro forma* financial information
15 reflecting a \$2.81 million loan amortized for 20 years at a maximum 7.0 percent per annum, and
16 retirement of the existing \$2.5 million short-term debt.

17 23. Staff's analysis indicates that for the year ended December 31, 2008, CWCGV had a
18 2.00 debt service coverage ratio ("DSC").³ The proposed debt will result in a *pro forma* DSC of
19 1.37. Staff's *pro forma* DSC indicates that CWCGV will be able to meet all obligations with cash
20 generated from operations.

21 24. As of December 31, 2008, CWCGV's capital structure consisted of 26.1 percent short-
22 term debt, 4.0 percent long-term debt and 69.9 percent equity. A *pro forma* capital structure
23 reflecting the loan terms and conditions described herein, results in 2.4 percent short-term debt, 29.7
24 percent long-term debt and 67.9 percent equity.

25 25. Staff typically recommends a CWCGV capital structure consisting of a minimum of
26 30 percent equity of total capital as appropriate to provide a balance of cost and financial risk for
27

28 ³ DSC represents the number of times internally generated cash will cover required principal and interest payments on long-term debt. A DSC greater than 1.0 indicates that operating cash flow is sufficient to cover debt obligations.

1 regulated utilities and ratepayers. Staff concludes that CWCGV's *pro forma* capital structure is
 2 consistent with Staff's capital structure for CWCGVs.

3 26. Staff also discusses the November 21, 2007, long-term agreement between CWCGV
 4 and the CAWCD for additional CAP allocation. Staff notes that, in order to pay for the additional
 5 allocation, CWCGV chose a five year payment plan with annual payments of \$222,995, including
 6 principal and interest at 5.2 percent. The payments began December 1, 2007, and end on December 1,
 7 2011.

8 27. Staff notes that A.R.S. § 40-302 requires a public service corporation to obtain
 9 Commission approval before acquiring long-term debt. According to Staff, CWCGV did not apply to
 10 the Commission before entering into the long-term agreement with CAWCD.

11 28. CWCGV asserts that the agreement does not qualify as long-term debt because it can
 12 cease making payments to CAWCD at any time and is not subject to any penalty for doing so.
 13 CWCGV characterizes the agreement as more akin to a purchase agreement than loan agreement. As
 14 such, CWCGV believes there is no encumbrance on CWCGV's assets and Commission approval is
 15 not needed.

16 29. Staff recommends that, in an abundance of caution, CWCGV should file an
 17 application with the Commission to provide an opportunity to fully consider the issue of whether the
 18 long-term agreement with CAWCD is governed by A.R.S. §§ 40-301 and 40-302.

19 30. Staff notes that CWCGV's audited financial report used by Staff in its financial
 20 analysis includes the outstanding long-term agreement with CAWCD. Therefore, delaying a
 21 resolution to this issue pending presentation of a separate application will not affect Staff's financial
 22 analysis in this matter.⁴

23 Engineering Analysis

24 31. According to Staff, CWCGV's certificated area encompasses approximately 6,000
 25 acres or 9.4 square miles. The water system consists of four wells producing approximately 7,000
 26

27 ⁴ Additionally, as noted earlier, it is imperative that the Cooperative obtain Commission approval for the proposed
 28 financing in sufficient time to close the loan prior to November 16, 2009, or the Cooperative will face the imposition of
 penalties and interest on Facility 1.

1 gallons per minute, six storage tanks with total storage capacity of 5,6000,000 gallons, and a
2 distribution system.

3 32. Three hundred and ten thousand dollars of the sought authorization is for proposed
4 new construction and capital projects. Those proposed projects are as follows:

<u>PROJECT</u>	<u>COST</u>
Replacing booster pumps at Reservoir No. 1	\$35,234.24
Orion meter reading hardware	21,930.00
Software upgrade for billing	15,706.25
Valle Verde main extension	92,776.28
Warehouse security system	35,778.92
Wall for security at Well No. 9	78,366.22
La Canada and Duval Mine main lowering	30,208.09
<u>TOTAL</u>	<u>\$310,000.00</u>

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12 33. Staff reviewed CWCGV's proposed plant additions and concluded that they are
13 appropriate and that the associated cost estimates are reasonable. However, no used and useful
14 determination of the proposed plant was made, and no particular future treatment should be inferred
15 for rate-making or rate base purposes.

16 **Consumer Services and Compliance Issues**

17 34. The Arizona Department of Environmental Quality ("ADEQ") regulates CWCGV's
18 water system under ADEQ Public Water System #10-004. An ADEQ report dated October 30, 2008,
19 indicates that CWCGV's system has no deficiencies and ADEQ determined that the system is
20 currently delivering water that meets water quality standards required by Arizona Administrative
21 Code, Title 18, Chapter 4.

22 35. CWCGV is located in the Tucson Active Management Area ("AMA") and is subject
23 to AMA reporting and conservation requirements.

24 36. According to Staff, as of April 2009, CWCGV was in discussions with the ADWR
25 regarding gallons per capita per day compliance and departmental requirements. ADWR related to
26 Staff that it believed a resolution would be reached by July 31, 2009.

1 37. Staff recommended that CWCGV be required to file with Docket Control a copy of
2 the letter issued by ADWR indicating that CWCGV's system is in compliance with ADWR
3 requirements governing water providers and/or community water systems by July 31, 2009.

4 38. CWCGV objected to this requirement stating that, although ADWR expected to have a
5 report completed by July 31, 2009, there was no way to ensure that would happen, and requested that
6 the required filing occur within 180 days of the effective date of this Decision.

7 39. On July 15, 2009, CWCGV filed a copy of the ADWR Water Provider Compliance
8 Status Report at issue. The Status Report from ADWR found that CWCGV is in compliance with
9 ADWR regulations and requirements.

10 40. Therefore, Staff's recommendation regarding the ADWR compliance filing already
11 has been satisfied.

12 41. Staff states that CWCGV has no compliance delinquencies.

13 **Staff Recommendations**

14 42. Based on its review of the Application, Staff made the following conclusions and
15 recommendations:

- 16
- 17 a) Staff concluded that CWCGV's proposed use of the funds is reasonable
 and appropriate;
- 18
- 19 b) Staff concluded that issuance of the proposed debt financing for the
 purposes stated in the Application is within CWCGV's corporate powers,
20 is compatible with the public interest, is consistent with sound financial
 practices and will not impair its ability to provide services;
- 21
- 22 c) Staff recommends that the Commission authorize CWCGV to borrow
 funds in an amount not to exceed \$2,810,000 under terms consistent with
23 the Chase Bank terms and conditions sheet;
- 24
- 25 d) Staff recommends revocation of any unused authorizations to issue debt
 granted in Decision No. 67515;
- 26
- 27 e) Staff recommends authorizing CWCGV to engage in any transaction and
 to execute any documents necessary to effectuate the authorization granted
28 in this proceeding;

- 1 f) Staff recommends that copies of the executed loan documents be filed
- 2 with Docket Control within 60 days of their execution;
- 3 g) Staff recommends that CWCGV docket as a compliance item in this
- 4 docket no later than July 31, 2009, documentation issued by ADWR
- 5 indicating that CWCGV is currently in compliance with departmental
- 6 requirements governing water providers and/or community water systems;
- 7 and
- 8 h) Staff recommends that, in an abundance of caution, CWCGV should file
- 9 an application before the Commission so the Commission may determine
- 10 whether the long-term agreement with the CAWCD falls under A.R.S. §§
- 11 40-301 and 40-302.

12 43. As noted above, Staff's recommendation in 40(g) has already been satisfied and it is

13 not necessary for the Commission to adopt this recommendation.

14 44. Additionally, as previously discussed, although CWCGV objected to Staff's

15 characterization of CWCGV's long-term agreement with CAWCD as possible debt that may require

16 Commission approval pursuant to A.R.S. §§ 40-301 and 40-302, CWCGV is not averse to setting the

17 issue before the Commission. We believe this issue should be determined in a separate proceeding

18 and we adopt Staff's recommendation.

19 **Conclusion**

20 45. It is reasonable, consistent with sound financial practices, and in the public interest to

21 grant CWCGV the requested financing authority to fund its proposed re-financing and improvements

22 subject to certain conditions.

23 46. Staff's recommendations, as modified, are reasonable and should be adopted.

24 **CONCLUSIONS OF LAW**

25 1. CWCGV is a public service corporation within the meaning of Article XV of the

26 Arizona Constitution and A.R.S. §§ 40-301 and 40-302.

27 2. The Commission has jurisdiction over CWCGV and the subject matter of the

28 Application.

3. Notice of the financing was provided in accordance with Arizona law.

4. Staff's recommendations, as modified, are reasonable and should be adopted.

1 IT IS FURTHER ORDERED that approval of the financing set forth herein does not
2 constitute or imply approval or disapproval by the Commission of any particular expenditure of the
3 proceeds derived thereby for purposes of establishing just and reasonable rates.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN _____ COMMISSIONER _____

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

11
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2009.

17 ERNEST G. JOHNSON _____
18 EXECUTIVE DIRECTOR

19
20 DISSENT _____

21
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23 DISSENT _____

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1 SERVICE LIST FOR:

COMMUNITY WATER COMPANY OF GREEN
VALLEY

2

3 DOCKET NO.:

W-02304A-09-0153

4

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