

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 39
2009 AUG - 11 AM

AZ CORP COMMISSION
DOCKET CONTROL

DATE: AUGUST 7, 2009
DOCKET NOS: W-02341A-06-0040

TO ALL PARTIES:

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

MOHAWK UTILITY COMPANY
(CC&N EXTENSION)

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:

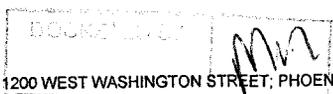
AUGUST 25, 2009 and AUGUST 26, 2009

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.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

Arizona Corporation Commission
DOCKETED

AUG 15 2009



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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
MOHAWK UTILITY COMPANY TO EXTEND
ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. W-02341A-06-0040

DECISION NO. _____

OPINION AND ORDER

DATE OF STATUS CONFERENCE:	November 10, 2008
DATE OF HEARING:	June 9, 2009
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Marc E. Stern
APPEARANCES:	Mr. Robert C, Rockwell, President, Mohawk Utility Company, Inc.;
	Mr. Jeffrey Jennings, managing member, 38 East, L.L.C.; and
	Ms. Ayesha Vohra, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On January 24, 2006, Mohawk Utility Company, Inc. ("Company" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for an extension of its Certificate of Convenience and Necessity ("Certificate") to provide water service in various parts of Yuma County, Arizona ("Application").

On February 23, 2006, the Commission's Utilities Division ("Staff") issued a Notice of Insufficiency to the Company pursuant to A.A.C. R14-2-411(C).

On July 14, 2006, Staff issued its second Notice of Insufficiency to the Company.

1 On March 8, 2007, Staff issued its third Notice of Insufficiency to the Company.

2 On May 9, 2007, 38 East, L.L.C. ("38 East") filed a Motion to Intervene ("Motion"). There
3 were no objections filed to this Motion.

4 On May 21, 2007, by Procedural Order, 38 East's Motion was granted.

5 On June 17, 2008, Staff sent a letter to the Company notifying it that if the Company failed to
6 file its 2007 Utilities Division Annual Report, Staff would move to close the docket administratively.

7 On October 17, 2008, Staff filed its report on the Company's Application. A review of the
8 file indicated that certain issues connected to the Application were unclear.

9 On October 27, 2008, Staff issued a Notice of Sufficiency on the Company's Application.

10 On October 30, 2008, by Procedural Order, a status conference was scheduled on
11 November 10, 2008.

12 On November 10, 2008, at the status conference, the managing member of 38 East, Jeffrey
13 Jennings, appeared and Staff appeared with counsel. The Company did not enter an appearance and
14 had not requested a continuance of the proceeding. Based on the Staff Report, it appeared that there
15 had been changes in the Company's intention with respect to the area for which it was seeking an
16 extension of its Certificate, and that the Company had not amended its Application. Additionally, a
17 question was raised with respect to the status of the Company's certified operator. By Procedural
18 Order, the Company was ordered to file an amended Application along with the correct legal
19 description for the area sought to be certificated herein. The Company was further ordered to file
20 certification that the Company is currently being operated by a certified operator. Staff was directed
21 to file a response to the Company's filing after it was completed.

22 On December 31, 2008, the Company filed an amended legal description for the area sought
23 to be certificated herein.

24 On February 18, 2009, the Company filed a letter formally amending its Application herein
25 and further indicating that the Company was working with the Arizona Department of Environmental
26 Quality ("ADEQ") to complete the certification process for its operator.

27 On March 6, 2009, Staff filed a memorandum which indicated that the Company had properly
28 amended its Application. Additionally, Staff contacted ADEQ, which verified that the Company is

1 being operated by a certified operator at the current time.

2 On March 18, 2009, by Procedural Order, a hearing was scheduled on June 9, 2009, and Staff
3 was ordered to file an Amended Staff Report by May 1, 2009. The Company was ordered to publish
4 notice of its amended application and to file certification of publication with the Commission.

5 On April 15, 2009, Staff filed the Amended Staff Report.

6 On May 27, 2009, the Company filed certification with the Commission that it had published
7 notice of the proceeding in a newspaper of general circulation in the Company's certificated service
8 area.

9 On June 9, 2009, a full public hearing was convened before a duly authorized Administrative
10 Law Judge of the Commission at its offices in Phoenix, Arizona. The company appeared through its
11 president, Mr. Jennings appeared as the managing member of 38 East, and Staff appeared with
12 counsel. At the conclusion of the hearing, the matter was taken under advisement pending
13 submission of a Recommended Opinion and Order to the Commission.

14 On June 12, 2009, Staff filed Amended Recommendations to the Amended Staff Report.

15 * * * * *

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

18 **FINDINGS OF FACT**

19 1. Pursuant to the authority granted by the Commission, the Company is an Arizona
20 corporation engaged in the business of providing public water service in an area approximately
21 40 miles east of Yuma in Yuma County, Arizona adjacent to, and north of old Highway 80 and
22 Interstate 8.

23 2. On January 24, 2006, and as amended on February 18, 2009, the Company filed an
24 application for an extension of its existing certificated service area in order to provide water service
25 to two parcels of land totaling an additional 240 acres, which are marked Exhibit "A" attached hereto
26 and incorporated herein by reference.

27 3. Public notice of the application was provided in accordance with the law.
28

1 4. With its application, the Company is seeking an extension of its certificate to provide
2 public water service to two separate parcels as follows: a 160 acre parcel of land located immediately
3 to the north of and adjacent to its existing certificated service area which is being developed by 38
4 East into approximately a 200 lot residential subdivision; and another 80 acre parcel slightly to the
5 west of the Company's existing certificated service area where the Company already has nine
6 existing customers and where its water treatment plant is located.

7 5. The Company utilizes a water treatment plant because the Company's water is
8 supplied from the Wellton-Mohawk Irrigation District Canal.¹

9 6. The Company has a contract with the Wellton-Mohawk Irrigation District for 200 acre
10 feet of water per year. Currently, the Company utilizes approximately 60 acre feet of water per year
11 to serve its existing customers and the Company estimates that it will use approximately an additional
12 100 acre feet of water to serve the extension areas when they are developed.

13 7. The Wellton-Mohawk Irrigation District Canal traverses the 38 East parcel to the
14 north of the Applicant's certificated service area and it is located slightly to the north of the second
15 parcel for which the Applicant is seeking an extension of its Certificate.

16 8. The Company's existing and proposed certificated service area is located outside of an
17 active management area ("AMA").

18 9. While there are no municipal water utilities in the proposed extension parcels, Tacna
19 Water Management Company ("Tacna") borders three sides of the Company's certificated service
20 area and is located adjacent to both parcels sought to be certificated herein.

21 10. Presently, the Applicant is providing public water service to approximately 150
22 customers in its existing certificated service area.

23 11. According to the Company's president, Robert Rockwell, the Company will enter into
24 a main extension agreement with 38 East in order to fund a new water treatment plant and needed
25 off-site infrastructure to meet the demands of customers in the larger parcel, at an estimated cost of
26 approximately \$412,000. Pursuant to A.A.C. R14-2-406, the extension agreement will be submitted
27

28 ¹ The canal provides water from the Colorado River which the Company treats and sells to its customers.

1 for review and approval by Staff after the agreement is executed and as development progresses.

2 12. Concurrently with its application, the Company submitted a copy of its Yuma County
3 franchise for the area sought to be certificated herein.

4 13. The Company has previously had its Curtailment Tariff approved by the Commission.

5 14. The Company's president estimates that the Company will have to add approximately
6 100,000 gallons of additional water storage capacity to serve customers as the Company grows.

7 15. The Company agrees with Staff's recommendations as amended during the
8 proceeding. Mr. Rockwell indicated that the Company will be installing an additional 20,000 gallons
9 of water storage to serve its existing customer base by the end of 2009 and will add an additional
10 20,000 gallons of water storage capacity by the end of December 2010.

11 16. Mr. Rockwell also indicated that he would file a letter in this docket with respect to
12 Decision No. 69208 (December 21, 2006), a proceeding in which the Company intervened in an
13 application by the neighboring water utility, Tacna, to extend its Certificate. In that proceeding, the
14 Company signed a settlement agreement that it would no longer serve a few customers in an
15 uncertificated area south of its certificated service territory which, according to Decision No. 69208,
16 would then be served by Tacna. As of the date of the hearing in this proceeding, Mr. Rockwell's
17 Company has not yet complied with Decision No. 69208 since the Company continues to serve the
18 disputed area. However, Mr. Rockwell avowed on the record that the Company will transfer the
19 distribution system and those customers who, according to the agreement with Tacna, are to be
20 served by Tacna. Mr. Rockwell agreed that the letter which he files in this docket will confirm that
21 his company has complied with Decision No. 69208.²

22 17. On October 17, 2008, and as amended on April 15, 2009, Staff filed its Report which
23 recommends approval of the Company's application for an Order Preliminary for the requested
24 extension area described in Exhibit "A."

25 18. On June 12, 2009, as a result of certain changes made orally by Staff during the
26 hearing, Staff filed Amended Recommendations to the Amended Staff Report.

27
28 ² Under the terms of the May 12, 2006, settlement agreement, it was contemplated that this process would be completed within two years of the agreement or May 12, 2008.

1 19. Although the Amended Staff Report indicates that the Company has no compliance
2 issues with the Commission, and was delivering water which meets the requirements of the Safe
3 Drinking Water Act ("SDWA") and the Arizona Department of Environmental Quality ("ADEQ"),
4 during the hearing, Mr. Rockwell indicated that certain tests are due to be filed with ADEQ.

5 20. Staff indicated that the Company is not currently in compliance with the requirements
6 of the Arizona Department of Water Resources ("ADWR") because the Company needs to file a
7 Water Plan Report with that agency.

8 21. Staff is further recommending the following conditions and compliance requirements
9 for the Company:

10 (1) that the Company file, with the Commission's Docket Control, as a compliance
11 item in this docket, a copy of the ADEQ Approval of Construction ("AOC") for at
12 least 20,000 gallons of additional storage (for a total of 40,000 gallons) by December
13 31, 2009;

13 (2) that the Company file, with the Commission's Docket Control, as a compliance
14 item in this docket, a copy of ADEQ's AOC for an additional 20,000 gallons of
15 storage capacity (for a total of 60,000 gallons of storage capacity) by December
16 31, 2010;

15 (3) that the Company file, with the Commission's Docket Control, as a compliance
16 item in this docket, a copy of the ADWR Letter of Adequate Water Supply ("LAWS")
17 for each subdivision in the requested areas, when received by the Company, but no
18 later than 30 days after issuance by ADWR;

18 (4) that the Company file, with the Commission's Docket Control, as a compliance
19 item in this docket, documentation showing that ADWR has determined that the
20 Company is in compliance with departmental requirements governing water providers
21 and/or community water systems by December 31, 2009;

20 (5) that the Company charge its customers its current authorized rates and charges
21 in the extension areas;

21 (6) that the Company file, with the Commission's Docket Control, as a compliance
22 item in this docket, a statement which communicates the intent of the Company to
23 convey the property and customers to Tacna involved in Decision No. 69208 by
24 October 31, 2009;

24 (7) that the Company file, with the Commission's Docket Control, as a compliance
25 item in this docket, documentation demonstrating that the water system is in full
26 compliance with ADEQ requirements and is currently delivering water that meets
27 water quality standards required by Arizona Administrative Code, Title 18, Chapter 4
28 by December 31, 2009;

27 (8) that the Company file, with the Commission's Docket Control, as a compliance
28 item in this docket, a copy of the Approval to Construct issued by ADEQ for water
plant facilities needed to serve the areas described in Exhibit "A" by January 1, 2011;

1 (9) that the Company be granted an Order Preliminary pending completion of
 2 condition Nos. 1, 4, 6, 7, and 8 above and file a motion in this docket requesting that
 the Commission grant the Certificate for the areas described in Exhibit "A;"

3 (10) that, within 30 days after the Company files its motion and on Staff's
 4 verification that the Company has satisfied condition Nos. 1, 4, 6, 7, and 8 listed
 5 herein above, for the areas described in Exhibit "A," Staff shall prepare and docket a
 Recommended Order granting the Certificate for the areas described in Exhibit "A"
 for Commission approval; and

6 (11) that if the Company fails to timely comply with any one of condition Nos. 1, 4,
 7 6, 7, and 8 listed herein above pertaining to the area described in Exhibit "A," the
 Order Preliminary approved for the area described in Exhibit "A" shall be null and
 void, and Staff shall file a memorandum to close this docket.

8 22. Because an allowance for the property tax expense of Applicant is included in the
 9 Company's rates and will be collected from its customers, the Commission seeks assurances from the
 10 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing
 11 authority. It has come to the Commission's attention that a number of water companies have been
 12 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
 13 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure the
 14 Company shall annually file, as part of its Annual Report, an affidavit with the Utilities Division
 15 attesting that the company is current in paying its property taxes in Arizona.

16 23. We find that Staff's recommendations, as set forth in Findings of Fact Nos. 16 and 21
 17 are reasonable and should be adopted. However, we further believe that the Company should be
 18 required to not merely file a letter of intent, but complete those requirements of Decision No. 69208
 19 not later than October 31, 2009, or the Application herein should be denied since there is no
 20 legitimate reason to delay further the agreed upon transfer to Tacna of the uncertified service territory
 21 and the customers who are located there.

22 CONCLUSIONS OF LAW

23 1. Applicant is a public service corporation within the meaning of Article XV of the
 24 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-252.

25 2. The Commission has jurisdiction over the Company and over the subject matter of the
 26 Application.

27 3. Notice of the Application was provided in accordance with the law.
 28

1 Mohawk Utility Company, Inc.'s motion, an Order for Commission approval that grants a Certificate
2 of Convenience and Necessity for the areas described in Exhibit "A."

3 IT IS FURTHER ORDERED that Mohawk Utility Company, Inc. shall charge water
4 customers in the areas more fully described in Exhibit "A" its tariffed rates and charges as authorized
5 previously by the Commission.

6 IT IS FURTHER ORDERED that Mohawk Utility Company, Inc. shall annually file, as part
7 of its Annual Report, an affidavit with the Utilities Division attesting that the Company is current in
8 paying its property taxes in Arizona.

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11
12
13 CHAIRMAN _____ COMMISSIONER

14
15 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

16
17 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
18 Executive Director of the Arizona Corporation Commission,
19 have hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this ____ day of _____, 2009.

22 _____
23 ERNEST G. JOHNSON
24 EXECUTIVE DIRECTOR

25 DISSENT _____

26 DISSENT _____

27 MES:db

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SERVICE LIST FOR:

MOHAWK UTILITY COMPANY

DOCKET NO.:

W-02341A-06-0040

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